A GUIDE TO THE MASSACHUSETTS PUBLIC EMPLOYEE COLLECTIVE BARGAINING LAW

INTERNET EDITION

A continually updated version of this guide is available on the Commission's web site at www.mass.gov/lrc.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
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BOSTON, MASSACHUSETTS

NOTICE

Although we make every effort to verify the accuracy of the information in this Guide, please do not rely on this information without first checking an official edition of the M.G.L. or other listed Acts, and the Code of Massachusetts Regulations.

The *Summary of Decisions* section is reflects the Commission's decisions up to the date printed on the contents page. However, subsequent decisions may affect that information.

If you need legal advice or counsel, please consult an attorney.

TABLE OF CONTENTS

PREFACE

Over the last twenty-five years, the Labor Relations Commission and the Donahue Institute for Governmental Services have jointly published nine editions of the definitive *Guide to the Massachusetts Public Employee Collective Bargaining Law*, commonly referred to as the "Green Book."

Although the overall format of the *Guide* remains unchanged, this edition contains significant changes in substance:

- The *Procedures* section has been updated to reflect new procedures at the Commission.
- M.G.L. c.150A, which covers certain public authorities and their employees, has been added to the *Statutes* section.
- The *Rules & Regulations* section has been updated to reflect changes in the Commission's Rules and Regulations in 1999 and 2000 and the Rules and Regulations of the Board of Conciliation and Arbitration and the Joint Labor-Management Committee have been added.
- The *Summary of Decisions* section has been updated.

We are grateful to the staff of the Donahue Institute for their efforts over the years and, particularly Sharon L. Faherty, who edited the last several editions of the *Guide*. We are also grateful to the staffs of the Board of Conciliation and Arbitration and the Joint Labor Management Committee for their input. Finally, we are especially grateful to our staff for their valuable input and assistance—much of which was done on their own time. Their dedication to the agency and its constituents is a model of public service.

This edition is available in both interactive (HTML) and printer-friendly (PDF) formats. For more information, please visit the Commission's web site at www.mass.gov/lrc.

Commonwealth of Massachusetts
Labor Relations Commission

Helen A. Moreschi, *Chairwoman*
Mark A. Preble, *Commissioner*
Peter G. Torkildsen, *Commissioner*

Boston, Massachusetts
November, 2002

EVOLUTION OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING

1935

The Wagner Act (National Labor Relations Act) is enacted, granting collective bargaining rights to private sector employees in companies engaged in interstate commerce.

1937

M.G.L. c. 150A, a so-called "Baby Wagner Act," is enacted, extending bargaining rights to private sector employees within the Commonwealth. The Labor Relations Commission is established to administer the new law. M.G.L. c.23, §9O, *et seq*.

1958

All public employees (except police officers) in Massachusetts are granted the right to join unions and to "present proposals" to public employers. M.G.L. c. 149, § 178D.

1960

M.G.L. c.40, §4C is enacted, giving city and town employees the right to bargain, provided that the local city or town adopts the law. However, there are no specific procedures for elections and no provisions covering the subject matter or method of bargaining.

1962

The Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority become subject to the representation and unfair labor practice provisions of M.G.L. c. 150A. Section 760 of the Acts of 1962.

1964

State employees are granted the right to bargain with respect to working conditions (but not wages). M.G.L. c.149, §178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations, that bargaining began.

Chapter 150A is amended to include private health care facilities as "employers" and nurses as "employees."

1965

Municipal employees are granted the right to bargain about wages, hours, and terms and conditions of employment. M.G.L. c.149, §§178G-N (repealing Chapter 40, §4C).

1968

Chapter 150A is amended to expressly include private nonprofit institutions as "employers" and nonprofessional employees of a health care facility or of private nonprofit institutions (except members of religious orders) as "employees."

1969

The Legislature establishes the Mendonca Commission to revise the public employee bargaining laws.

1973

M.G.L. c.150E is enacted, granting full collective bargaining rights to most state and municipal employees.

Binding arbitration of interest disputes is established for police and fire employees. Chapter 1078 of the Acts of 1973.

1974

M.G.L. c.150E is amended to: 1) strengthen the enforcement powers of the Labor Relations Commission; 2) modify union unfair labor practices; and 3) modify the standards for the exclusion of managerial employees.

1975

The Labor Relations Commission issues standards for appropriate bargaining units affecting 55,000 state employees in more than 2,000 job classifications. Ten statewide units are created—five non-professional and five professional.

M.G.L. c.150E is amended to provide for a separate bargaining unit for state police. Chapter 591 of the Acts of 1975.

1977

Chapter 150E is extended to court employees in the judicial branch; two state-wide units are established for judicial branch employees (except court officers in Middlesex and Suffolk Counties). Chapter 278, Section 3 of the Acts of 1977.

The Representation and prohibited practice provisions of M.G.L. c.150E are extended to housing authorities and their employees.

The Joint Labor-Management Committee is established to oversee collective bargaining negotiations and impasses involving municipal police officers or firefighters.

Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.

1980

"Proposition 2 1/2" is enacted, repealing final and binding arbitration for police and firefighter contract negotiations.

1982

The Labor Relations Commission issues comprehensive regulations setting forth agency service fee procedures, including requirements for unions to collect a fee pursuant to M.G.L. c.150E, §12 and for employees to challenge the amount or validity of the fee.

1983

M.G.L. c.150A is amended to specifically cover private vendors who contract with the state or its political subdivisions to provide certain social and other services.

1986

M.G.L. c.150E is amended to forbid employers from unilaterally changing employees' wages, hours and working conditions until the collective bargaining process (including mediation, fact-finding, and arbitration, if applicable) has been completed.

1987

Interest arbitration is reinstituted for police and firefighter contract negotiations, with arbitration awards subject to funding by the legislative body.

1990

LRC Revises Regulations.

1993

The Education Reform Act of 1993 (Chapter 71 of the Acts of 1993) impacts public employees by making major changes concerning the demotion and dismissal of teachers and principals.

1996

For cases in which the Labor Relations Commission issues a complaint of prohibited practice and orders a hearing, Chapter 151, Section 577 of the Acts of 1996 allows the parties to elect to submit the case to arbitration at any time up to thirty days prior to the commencement of the hearing ordered by the Commission.

1999

LRC Revises Regulations.

2000

LRC Revises Regulations.

FREQUENTLY ASKED QUESTIONS

GENERAL INFORMATION

What does the law do?

The Massachusetts public employee collective bargaining law gives most public employees at the state, county, and municipal levels the right to: (1) form, join, or participate in unions; (2) bargain collectively over terms and conditions of employment; (3) engage in other concerted activities for mutual aid and protection; and (4) refrain from participating in any or all of these activities.

When did the law take effect?

The law was signed on November 26, 1973, and became effective on July 1, 1974.

Who administers the law?

The Massachusetts Labor Relations Commission which has offices at 399 Washington Street, 4th Floor, Boston, Massachusetts 02108.

Who is covered by the law?

State, county and municipal employees in the executive and judicial branches of government and employees of certain Authorities may bargain collectively, with the exception of managerial and confidential employees who are specifically excluded from coverage. Employees may be designated as managerial only if they participate to a substantial degree in the formulation of policy, assist to a substantial degree in collective bargaining, or have a substantial, independent, appellate role in personnel or contract administration. Employees may be designated confidential only if they directly assist and act in a confidential capacity to a person excluded from the Law's coverage.

REPRESENTATION RIGHTS

How do employees select an exclusive bargaining agent?

By majority action. The Labor Relations Commission is authorized to direct an election by secret ballot to determine the exclusive representative whenever (1) one or more employee organizations claim to represent a substantial number of employees in an appropriate unit; (2) an employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner; or (3) a substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees.

Who determines an appropriate bargaining unit and on what basis is the decision made?

The Labor Relations Commission is authorized to determine appropriate bargaining units giving due regard to such criteria as community of interest, efficiency of operations, and safeguarding effective representation.

What rights and obligations does a recognized or certified employee organization have?

The exclusive representative is authorized to negotiate agreements covering all employees in a bargaining unit and must represent all such employees fairly in contract negotiation and administration.

Under what circumstances may an employee organization seek an election?

Generally, an employee organization filing a petition for certification must satisfy the Labor Relations Commission that at least 30% (50% if the employees are currently represented) of the affected employees desire to be represented by that organization.

How will representation disputes be resolved?

An appropriate petition must be filed with the Labor Relations Commission asking that it direct an election to be held. All employees vote in secret and the choice is made by a majority of valid votes cast.

May employees decide to terminate representation by an employee organization or change representatives?

Yes. A petition may be filed with the Labor Relations Commission by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees within the unit and asking that the Labor Relations Commission direct an election to be held to determine the exclusive representative.

Are there specific times during which a representation petition may be filed?

Yes. Generally, the Labor Relations Commission will not entertain a petition during the term of a valid collective bargaining agreement, unless the petition is filed no more than 180 days and no fewer than 150 days (no more than 90 days and no fewer than 60 days for petitions filed pursuant to M.G.L. c.150A) prior to the expiration of the agreement. The Commission will not entertain petitions filed during the first twelve months after an election, certification, and certain voluntary recognition agreements and will not entertain petitions filed by unions within the first six months following the withdrawal of a petition or a disclaimer of interest in the employees.

What is an "agency service fee" and how does it work?

An "agency service fee" is an amount that an employee organization may charge employees in its bargaining unit who are not members of the organization for their proportionate share of the costs of collective bargaining and contract administration. A nonmember who believes the amount of the service fee demanded by the union exceeds that "proportionate share" may file an unfair labor practice charge with the Commission. The fee payer may also challenge the "validity" of the demand on certain grounds set forth in Commission regulations or case law.

THE COLLECTIVE BARGAINING PROCESS

What is collective bargaining?

Collective bargaining is the mutual obligation of employers' and employees' representatives to meet at reasonable times and confer in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment, or the negotiation of an agreement, or a question arising under an agreement.

Who may represent the respective parties in the actual bargaining process?

The parties may be represented by a person or persons of their own choosing at the bargaining table.

What if the provisions of the bargaining agreement conflict with applicable law?

If there is a conflict between the provisions of a collective bargaining agreement and certain statutes enumerated in Section 7(d) of the Law, ordinances, by-laws or regulations, the terms of the agreement prevail. The enumerated statutes, etc., deal essentially with wages and/or "working conditions."

Must an employer negotiate with representatives of the bargaining unit?

Yes. The employer and exclusive bargaining representative must, upon demand, negotiate in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment. No public employer may exempt itself from the operative provisions of the law.

Is either side required to agree?

No. But both sides must bargain in good faith, and either reach agreement or an impasse. If an agreement is reached, it must be reduced to writing and executed by the parties.

IMPASSE—WHAT THEN?

What if the public employer and labor organization fail to reach an agreement on a new or successor collective bargaining agreement?

The law prohibits public employees from striking. It also prohibits public employers from unilaterally changing terms and conditions of employment. The Board of Conciliation and Arbitration administers procedures for resolving collective bargaining impasses under the public employee collective bargaining law. These procedures comprise mediation, fact-finding and interest arbitration. The Board is located at 399 Washington Street, 5th Floor, Boston, Massachusetts 02108. Impasse resolution services for police and firefighters are provided by the Joint Labor-Management Committee (JLMC), located at One Ashburton Place, 6th Floor, Boston, Massachusetts 02108.

How does the mediation process work?

After a reasonable period of negotiation, the parties acting individually or jointly may petition the Board of Conciliation and Arbitration for the determination of an impasse and the initiation of mediation. Upon receipt of this petition, the Board commences an investigation to determine both if the parties have negotiated for a reasonable period of time and if an impasse exists.

Once an impasse is found, the Board appoints a mediator to assist the parties in reaching agreement. In some instances, the parties themselves agree upon a mediator.

Suppose the parties still cannot agree? Will a neutral third party be brought in to make findings of fact?

If the dispute survives the best efforts of the mediator, the mediator will recommend to the Board of Conciliation and Arbitration that the case be certified to fact-finding when either or both parties have requested fact-finding.

A fact-finder will generally be selected from a list of fact-finders sent to the parties by the Board. If the parties cannot agree, the Board will appoint a fact-finder. The fact-finder's primary responsibility is to preside at fact-finding hearings and issue a written report with recommendations for resolving all issues in dispute. The fact-finder has the authority to mediate the dispute at the request of both parties.

Within thirty days after the appointment, the fact-finder must submit his or her report to the parties and the Board. The recommendations contained in the report are advisory and do not bind the parties. If the impasse remains unresolved ten days after the receipt of the findings, the Board is required to make them public.

After the fact-finding procedure fails to resolve the dispute, what can the parties do?

Normally, if the impasse continues after the publication of the fact-finder's report, the issues in dispute go back to the parties for further bargaining.

The law, however, allows the employer and employee organization to enter into arbitration of contract impasse issues, provided they both agree to do so. This voluntary interest arbitration binds the legislative body only in those cases where the legislative body has agreed in advance to be bound by the arbitrator's award. The parties may agree to any form of arbitration that suits their interest.

What happens if impasse exists with police and firefighters?

Effective March 20, 1988, Chapter 589 of the Acts of 1987 went into effect. This law gives the Joint Labor-Management Committee (JLMC) the power to resolve collective bargaining impasses through interest arbitration awards, which are final and binding on the public employer if they are supported by substantial evidence and are funded by the legislative body. The statute sets forth certain guidelines for determining interest arbitration awards.

What is the Joint Labor Management Committee?

The Committee is composed of twelve members, plus a chairperson and a vice-chairperson. Twelve members are appointed by the governor: three from nominations by firefighter unions, three from nominations by police unions, and six from nominations by the governor's Local Government Advisory Committee. The Joint Committee nominates the chairperson and vice-chairperson. In addition to overseeing police and firefighter negotiations, the Committee may, at its discretion, take jurisdiction in any dispute over the negotiation of the terms of a collective bargaining agreement involving municipal firefighters or police officers.

The Committee or its representatives may meet with the parties to a dispute, conduct formal and informal conferences, and take other steps to encourage the parties to agree on the terms of a contract or procedures to resolve the dispute. Some of these procedures include mediating, monitoring negotiations, conducting hearings, and ordering arbitration. Since the repeal of compulsory binding arbitration by "Proposition 2 1/2," a question exists as to whether the Committee can bind the legislative body of a municipality to honor an agreement when the Committee uses arbitration to resolve a dispute.

Once an agreement is reached, may the parties specify procedures to be used to settle disputes concerning its interpretation?

Yes. The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation of the agreement. If a collective bargaining agreement does not include final and binding grievance arbitration, the Commission may order binding arbitration of any grievance arising under the terms of the agreement upon the request of either party to the agreement.

PART I: PROCEDURES

I PROCEDURES

A. REPRESENTATION CASES: HOW AN EMPLOYEE ORGANIZATION BECOMES THE EXCLUSIVE REPRESENTATIVE OF A BARGAINING UNIT OF EMPLOYEES[1]

The Commission has prepared a *Representation Case Manual* (*R-Case Manual*) that covers the material in this summary in greater detail. The manual is available on the Commission's web site at www.mass.gov/lrc. Portions of the Code of Massachusetts Regulations (CMR) may be found in Part III, Rules & Regulations. For summaries of decisions concerning representation case procedures, *see* Part IV, Summary of Decisions, paragraph E.

(1) Voluntary Recognition

M.G.L. c.150E, §4 authorizes public employers to recognize an employee organization designated by a majority of the employees in an appropriate bargaining unit as the exclusive representative of the employees in the unit for the purpose of collective bargaining. However, an employer may not voluntarily recognize an employee organization that does not represent a majority of the employees and may not interfere with employees' rights to freely select or reject an employee organization as their exclusive representative.

Although there are no specific procedures or requirements for voluntary recognition, if an employer and an employee organization comply with the requirements contained in 456 CMR 14.06(5), they may bar a rival employee organization's or a decertification petition within the first year after recognition to allow sufficient time to negotiate a first collective bargaining agreement. *See*, paragraph A(3)(e), below

If the public employer declines to voluntarily recognize the employee organization, the employee organization may file a representation petition with the Commission.

(2) Filing A Representation Petition

(a) Petitions by Employee Organizations

The "petitioner" (the employee organization filing the petition) must file the petition on a form specified by the Commission. If the petitioner seeks to represent employees who are not currently represented by an employee organization, the form must be accompanied by proof in the form of a *showing of interest* (*see*, paragraph A(2)(b), below) that at least thirty percent (30%) of the employees covered by the petition have designated the

[1] Although many of the procedures for handling cases under M.G.L c.150A are identical to the procedures for handling cases under M.G.L. c.150E, there are differences. *See*, *e.g*. Part IV, Summary of Decisions, paragraph E(3)(2) (period during which a representation petition may be filed different); Part IV, Summary of Decisions, paragraph B(4) (certain professional employees excluded from definition of employee in M.G.L. c.150A, §2).

petitioner to act in their interest. *See*, 456 CMR 14.05(1). If the petitioner seeks to represent employees who are currently represented by an employee organization, the form must be accompanied by proof in the form of a *showing of interest* that at least fifty percent (50%) of the employees covered by the petition have designated the petitioner to act in their interest. *See*, 456 CMR 14.05(2).

> **There are specific times during which an employee organization may file a petition seeking to represent employees who are already represented by an employee organization. *See*, paragraph A(3), below, and 456 CMR 14.06; 456 CMR 14.17.**

For further information, *see R-Case Manual*, §1.2

(b) Showing of Interest

The proof that the required percentage of employees have designated the petitioner to act in their interest is called a *showing of interest* and must conform to the requirements contained in 456 CMR 11.05. Generally, petitioners submit either individual authorization cards or a sheet of paper with multiple lines for employees to indicate their authorization. However, regardless of the form, employees must individually sign and date the showing of interest within six (6) months of the filing of the petition. *See*, 456 CMR 11.05(1)-(2).

The Commission evaluates the showing of interest to determine whether there is enough interest among employees to justify the public expense of conducting an election. For information about the showing of interest required to intervene in a representation case, *see* 456 CMR 14.05(3).

The Commission may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been submitted. If any party challenges the sufficiency of the showing of interest submitted by any other party, the Commission will conduct an administrative investigation. However, the Commission's determination that a showing of interest either is or is not sufficient is not subject to further litigation or hearing, and the Commission does not disclose the identity of employees who sign a showing of interest. Following the completion of the case, the Commission returns any showing of interest to the petitioner or intervenor.

The Commission has found that the following language satisfies the showing of interest requirement when individually signed and dated by employees:

> **I [*employee name*], wish to be represented for the purposes of collective bargaining by [employee organization].**

or

We, the undersigned, wish to be represented for the purposes of collective bargaining by [employee organization].

An employee may sign a showing of interest for more than one employee organization and, if an election is held, may vote for any employee organization that appears on the ballot or may vote to be represented by no employee organization.

For further information, *see R-Case Manual*, §§1.4-1.5

(c) Petitions by Employers

If one or more employee organizations claim to represent a substantial number of employees, an employer may file a petition requesting the Commission to conduct an election to determine which of the competing employee organizations is the exclusive bargaining representative. *See*, 456 CMR 14.02. The petitioning employer must file the petition on a form specified by the Commission. An employer need not submit a showing of interest with its petition. In fact, employers are not permitted to ask employees whether they support one employee organization over another. However, the employer must submit a statement of the relevant facts on which the allegation of competing claims are based.

For further information, *see R-Case Manual*, §1.2.1

(d) Decertification Petitions

An employee or group of employees who no longer wish to be represented by an employee organization may file a petition to decertify the incumbent employee organization.

A successful decertification election results in the employees no longer being represented by <u>any</u> employee organization. Employees who wish to be represented by a different employee organization should follow the procedures described in paragraph A(2), above.

The petitioning employee(s) must file the petition on a form specified by the Commission, and must submit proof in the form of a *showing of interest* (*see*, paragraph A(2)(b), above) that at least fifty percent (50%) of the employees covered by the petition no longer wish to be represented by the incumbent employee organization. *See*, 456 CMR 11.05(2). A showing of interest in support of a decertification petition should indicate that the employees "no longer wish to be represented by [the incumbent employee organization]".

There are specific times during which an employee or group of employees may file a petition seeking to decertify an incumbent employee organization. *See*, paragraph A(2), above, and 456 CMR 14.06; 456 CMR 14.17.

The incumbent employee organization may intervene in the de-certification case and appear on the ballot. *See*, 456 CMR 14.18. The incumbent employee organization may also file a disclaimer of interest and/or, if the incumbent is the *certified* exclusive representative, a request for revocation of certification pursuant to 456 CMR 14.16. For additional information about certification and revocation of certification, *see* paragraphs A(8) and A(9), below.

For further information, *see R-Case Manual*, §1.2.3

(3) When Petitions May be Filed

To balance the sometimes competing interests of employee free choice and stable labor relations, the Commission has developed a set of rules concerning when certain representation petitions may be filed. Those rules are contained in 456 CMR 14.06 and are briefly summarized as follows:

(a) Contract Bar

To ensure that the parties to an existing collective bargaining agreement will have an opportunity to negotiate a successor agreement without undue disruption or interference, the Commission will not entertain a representation petition during the term of a valid collective bargaining agreement, unless the petition is filed no more than 180 days and no fewer than 150 days prior to the termination of the agreement. *See*, 456 CMR 14.06(a).[2]

(b) Withdrawal/Disclaimer Bar

To ensure stable labor relations, the Commission will not entertain a representation petition if the petitioner either withdrew a prior petition seeking to represent the petitioned-for employees or disclaimed interest in the petitioned-for employees within the preceding six (6) months.

(c) Election-Year Bar

To conserve agency resources, the Commission will not conduct an election as a result of any representation petition involving employees who were parties to an election during the preceding twelve (12) months.

[2] In cases arising under M.G.L. c.150A, the period during which a representation petition may be filed during the term of a valid collective bargaining agreement is no more than 90 days and no fewer than 60 days prior to the termination of the agreement. See, 456 CMR 2.04.

(d) Certification-Year Bar

To ensure stable labor relations, the Commission will not conduct an election as a result of any petition involving employees who are in a bargaining unit where an employee organization was *certified* as the exclusive representative within the preceding twelve (12) months. For additional information about certification, *see* paragraph A(8), below.

(e) Recognition-Year Bar

To ensure stable labor relations, the Commission will not conduct an election as a result of any representation petition where an employee organization was *recognized* as the exclusive representative of any of the employees involved within the preceding twelve (12) months, provided that the recognition was made in accordance with the following requirements:

1. The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

2. The employer has conspicuously posted a notice on bulletin boards where notices to employees are normally posted for a period of at least twenty (20) consecutive days advising all persons that it intends to grant exclusive recognition without an election to a named employee organization in a specified bargaining unit;

   If, with the twenty-day period, another employee organization claims to represent any of the employees involved and has filed a valid representation petition with the Commission, the employer may not recognize the employee organization.

3. The recognition is in writing and specifically describes the bargaining unit involved; and

4. The employee organization is in compliance with the applicable filing requirements set forth in M.G.L. c. 150E, §§13 and 14.

For additional information about recognition, *see* paragraph A(1), above.

For further information, *see R-Case Manual*, §1.10

(4) Conferences and Hearings

When the Commission receives a representation petition, it will conduct a preliminary investigation to determine whether the petition is supported by the requisite showing of interest (*see*, paragraph A(2)(b), above) and that the petition otherwise raises a question of

representation in an appropriate bargaining unit. If the Commission determines that the petition raises a question of representation, the Commission will schedule an investigatory hearing and notify the petitioner, the employer, and any other party known to have an interest in the petition of the date, time, and location of the investigation. To ensure that all interested parties are aware of the pending petition and scheduled investigatory hearing, the employer is required to post the Commission's Notice of Hearing in a place readily accessible to the employees. *See*, 456 CMR 14.08(3)

Within thirty (30) days of the notice of hearing, any other employee organization, including the incumbent employee organization, may intervene in the proceeding. *See*, 456 CMR 14.18.

As part of its investigation, the Commission may require any party to submit information to assist the Commission in making its determination, including: the job titles of the petitioned-for employees, the job duties of any employee, the names of any other employee organizations that represent the employer's employees, and/or an organizational chart or information about the employer's management structure.

Prior to the scheduled hearing, a Commission agent may contact the parties to discuss a *consent election agreement* or to narrow the disputed issues. In rare cases, a Commission agent may schedule a pre-hearing conference to discuss any matter prior to the investigatory hearing. *See*, 456 CMR 14.08(4)(c)(5).

For further information, *see R-Case Manual*, §1.7-9

(a) The Consent Agreement

Pursuant to 456 CMR 14.11, the petitioner, employer, and any intervenor(s), may seek to waive the investigatory hearing and enter into a *consent election agreement.* As the term implies, the parties to a consent election agreement stipulate that the petitioned-for bargaining unit is appropriate and that there are no other substantive or procedural obstacles, and consent to an election involving the employees in the agreed-to bargaining unit. The Commission agent assigned to the case may assist the parties in negotiating a consent election agreement.

Any agreement that the petitioned-for bargaining unit is appropriate must be approved by the Commission. Pursuant to M.G.L. c.150E, §3, the Commission is required to determine whether the petitioned-for bargaining unit is an appropriate unit. To make that determination, the Commission may request certain information from the parties, including: the job titles of the petitioned-for employees, the job duties of any employee, the names of any other employee organizations that represent the employer's employees, and/or an organizational chart or information about the employer's management structure. If the Commission declines to approve a consent election agreement, the Commission agent will notify the parties and explain the reasons for the Commission's declination. The parties are

then free to re-negotiate a new consent election agreement based on the information provided by the Commission.

The appropriateness of a petitioned-for bargaining unit is a legal determination. For additional information about the criteria used to determine the appropriateness of a bargaining unit, *see* Part IV, Summary of Decisions, paragraph D.

If the Commission approves the parties' consent election agreement, the Commission will conduct a secret ballot election in accordance with 456 CMR 14.12. For more information about how the Commission conducts secret ballot elections, *see* paragraph A(5), below.

If the parties are unable or unwilling to enter into a consent election agreement, the Commission agent will conduct an investigatory hearing and the Commission will issue a decision.

For further information, *see R-Case Manual*, §1.13

(b) The Investigatory Hearing and Decision

The investigatory hearing is conducted by a Commission agent who will investigate the petition and gather any facts necessary to permit the Commission to decide any questions raised by the petition. Pursuant to 456 CMR 14.08(4)(c), the Commission agent will inquire fully into any disputed facts relevant to the issues raised by the petition and is not bound by the rules of evidence observed by the courts. Even if the parties are unable or unwilling to enter into a consent election agreement, the parties often submit joint stipulations of fact and/or joint exhibits. Submitting joint stipulations of fact and/or joint exhibits can significantly narrow the issues for hearing and save the parties considerable time and expense. Accordingly, the Commission agent will generally request that the parties attempt to agree to certain facts or offer certain documents that are not in dispute.

The Commission agent will often inquire into matters like: the job titles of the petitioned-for employees, the job duties of any employee, the names of any other employee organizations that represent the employer's employees, and/or an organizational chart or information about the employer's management structure. The Commission agent may also inquire into facts relevant to determine whether the Commission has jurisdiction or whether the petition and/or any election should or should not be barred for one of the reasons listed in 456 CMR 14.06. For more information about bars to election, *see* paragraph A(3), above.

Prior to any hearing a party may ask the Commission to issue a *subpoena* to compel the attendance of any witness at a hearing or a *subpoena duces tecum* to require a person to bring to the hearing particular documents that will be needed at the hearing. *See*, 456 CMR 13.12. At the hearing, parties may appear and represent themselves, or be represented by attorneys or other representatives, and may examine and cross-examine

witnesses, submit documentary evidence, and, with the permission of the Commission agent, either argue orally at the end of the hearing or may file a written brief after the hearing. After the hearing, the Commission will consider the evidence and arguments, and issue a written decision. Generally, the decision will either direct an election in a specified bargaining unit or dismiss the petition without an election.

For further information, *see R-Case Manual*, §1.14

(5) Elections

Whether the election comes as a result of a consent election agreement or a direction of election, the process of the election is the same. 456 CMR 14.12 contains the procedures for conducting secret ballot elections.

> **Due to the current resources, the Commission has decided to conduct all representation elections through the use of the Commission's mail-ballot election procedure. For detailed information about the Commission's mail-ballot election procedure, *see R-Case Manual*, §4.**

At the election, all parties (i.e. the petitioner, the employer, and any intervening employee organization(s) whose name appears on the ballot) are permitted to designate one official observer to assist the Commission agent(s) and to observe the conduct of the election.

For further information, *see R-Case Manual*, §§3-4

(a) The Voter Eligibility List

The Commission identifies the eligible voters from a list of employees' names and home addresses supplied by the employer. The list is often called the *Excelsior* list, after the National Labor Relations Board decision in *Excelsior Underwear, Inc*., 156 NLRB 1236, 61 LRRM 1217 (1966). The Commission will supply a copy of the voter eligibility list to all parties to the election and requires the employer to submit the list far enough in advance of the election to permit all parties to communicate with eligible voters. A Commission agent will work with the parties to ensure that the voter eligibility list is complete and accurate.

For further information, *see R-Case Manual*, §3.4

(b) Challenged Ballots

Any party, through its official observer, may challenge the eligibility of any prospective voter. *See*, 456 CMR 14.12(2). Generally, parties challenge the eligibility of a voter on the ground that the prospective voter is either a *managerial* or *confidential* employee or is otherwise excluded from the bargaining unit. To challenge a prospective voter, the observer should clearly state that the voter's eligibility is challenged and the

reason for the challenge (*e.g*. "The employer challenges the eligibility of this voter on the ground that she is a managerial employee"). The Commission agent will officially challenge the eligibility of any prospective voter whose name does not appear on the eligibility list.

The Commission agent will permit a challenged voter to vote, but will impound the ballot, by placing the ballot into a special envelope. The Commission agent will record the voter's name, job title, the challenging party, and reason for the challenge and deposit the ballot into the ballot box until the conclusion of the election.

At the conclusion of the election, the Commission agent may attempt to resolve any outstanding challenged ballots. If any challenged ballot is resolved in favor of the voter being eligible to vote, the Commission agent will open the challenged ballot envelope and, while preserving the secrecy of the vote, deposit the ballot into the ballot box prior to counting and tabulating the ballots. If the number of remaining challenged ballots is not sufficient to affect the outcome of the election (*i.e*., even if all the challenged ballots had been cast for the losing party, that party still would lose) the challenged ballots are never opened or counted, thereby preserving the secrecy of the challenged ballots.

If, however, the challenged ballots are sufficient to affect the outcome of the election, the Commission will investigate the eligibility of the challenged voter(s) by requesting evidence from the parties to the election. Generally, if the material facts concerning the voter's eligibility are undisputed, the Commission will issue a ruling on the eligibility of the challenged voter(s), and, with all appropriate safeguards to protect the secrecy of the voter(s), count the ballot(s) and add the totals to the previous tabulation to determine the final outcome. The Commission may also order an investigatory hearing, conducted pursuant to 456 CMR 13.00, on the challenged ballot(s) in order to resolve important disputed facts about the eligibility of the voter(s).

For further information, *see R-Case Manual*, §3.17

(c) Counting and Tabulating the Results

Following the conclusion of the voting, the Commission agent will count the ballots and prepare a tally of the results. As each ballot is counted, the Commission agent will display the ballot for the parties' official observers and "call" the vote, by announcing which of the choices on the ballot the voter selected, or, if the ballot is not properly marked, by announcing that the ballot is void. The tally will show the total number of votes cast, the number cast for no employee organization, the number cast for each employee organization whose name appeared on the ballot, the number of void ballots, and the number of challenged ballots.

For further information, *see R-Case Manual*, §3.22

(d) Protested Ballots

During the counting and tabulation process, any party, through its official observer, may object to the way the Commission agent calls a ballot. To protest the call of a ballot, the party should clearly state that he protests the call and the reasons for the protest. If the ballot call to which the party has protested will affect the outcome of the election, the protesting party may file Objections to the Conduct of the Election based upon the ballot call.

For further information, *see R-Case Manual*, §3.22.5

(6) Objections to the Conduct of the Election

Parties may file objections to the election within seven (7) days after the tally of the ballots has been furnished. Any objections filed must be accompanied by a short statement of the reasons for the objections and must be served on all parties. The Commission will investigate the objections and may require the parties to the election to submit evidence, including sworn affidavits, to support any factual allegations concerning the objections. Based on the evidence submitted, the Commission may decide the issues on the basis of undisputed facts, or conduct a hearing pursuant to 456 CMR 13.00, to resolve any disputed facts. If the Commission concludes that the objections warrant setting aside the result of the election, the Commission may re-run the election. If, however, the Commission concludes that the objections do not warrant overturning the election, the Commission will issue a Certification of the Results of the Election. *See*, paragraph A(8), below.

For further information, *see R-Case Manual*, §5.3

(7) "Blocking" Charges

If a party to the election believes that any other party to the election has engaged in a prohibited practice that would tend to interfere with the conduct of a valid election, the party may file a Motion to Block the Election, pursuant to 456 CMR 15.12. Any party seeking to block an election must submit evidence to establish that (1) there is probable cause to believe that the opposing party engaged in the conduct alleged; (2) the conduct alleged is a prohibited practice; and (3) the conduct may interfere with the employees' free choice in the election. Based on the information submitted by the parties, the Commission may postpone the election until the charge of prohibited practice is resolved. In some cases, the remedy in the prohibited practice case may be to extend the period during which the Commission will entertain no representation petition. Under those circumstances, the Commission may dismiss the pending representation petition.

For further information, *see R-Case Manual*, §1.12

(8) Certification

An employee organization "wins" a representation election by receiving a majority of the votes cast in the election (not simply the most votes). When an employee organization receives a majority of the votes cast in the election, the Commission certifies the employee organization as the exclusive collective bargaining representative in the bargaining unit. However, the Commission will not issue a certification until the employee organization has complied with M.G.L. c.150E, §§ 13 and 14 (which require that certain information be filed with the Commission). *See*, 456 CMR 14.12(4), 16.05.

(9) Revocation Of Certification

An employee organization that has previously been certified as the exclusive representative of a bargaining unit may request the Commission to revoke its certification. *See*, 456 CMR 14.16.

For further information, *see R-Case Manual*, §11

(10) Clarification or Amendment (CAS) Petitions

Only employee organizations and employers are permitted to file CAS petitions to ask the Commission to clarify or amend an existing bargaining unit (*i.e*. to add a job title to the unit or to remove a position from an existing unit). The petition must be on a form specified by the Commission.

After an employer or employee organization files a CAS petition, the case is assigned to a Commission agent for investigation. The purpose of the investigation is to gather sufficient information to determine if there is a dispute of material fact concerning the unit placement issue. The Commission agent typically initiates the investigation by holding an informal conference. Parties should come prepared to present oral and written (*e.g*., collective bargaining agreements, job descriptions, and organizational charts) information at the informal conference regarding the disputed position(s).

After the Commission agent has gathered the information provided by the parties, the Commission issues a show cause letter outlining the facts presented during the investigation. The parties then have an opportunity to identify any of the facts that are in dispute or in error by submitting written affidavits and any other information in support of their position to the Commission within a specified amount of time.

If the investigation reveals that there are disputes of material fact, the Commission will issue a Notice of Hearing to the parties. A Commission agent subsequently will conduct an investigatory hearing after which the Commission will issue a decision. If there are no disputes of material fact, the Commission will decide the unit placement issue on the facts gathered during the investigation.

For further information, *see R-Case Manual*, §8

B. HOW THE COMMISSION HANDLES UNFAIR LABOR OR PROHIBITED PRACTICE CASES[3]

(1) The Charge

Employees, employee organizations,[4] employers and their representatives can file a charge with the Commission alleging that an employee organization or employer has violated a specific section of M.G.L. c.150A or M.G.L. c.150E. The charge must be on a form specified by the Commission. Pursuant to 456 CMR 12.02, the party filing the charge (referred to as the *charging party*) must serve a copy of the charge and any attachments on the opposing party (referred to as the *respondent*). When the Commission receives a charge, the Commission will assign it a case number and issue a Notice that a Charge has been Docketed to all parties. The Notice has information and important filing deadlines concerning the Commission's investigation.

(2) The Investigation

M.G.L. c.150E, §11 authorizes the Commission to conduct an investigation into any charge of prohibited practice. The Commission investigates charges through a *Written Investigation Procedure*. A copy of the Commission's *Written Investigation Procedure* is available on the Commission's web site at www.mass.gov/lrc.

During the investigation, the charging party has the burden to present information that establishes probable cause for the Commission to believe that the respondent has violated the Law, as claimed by the charging party. To meet that burden of proof, the charging party should submit written, sworn statements of fact (affidavits) from witnesses with personal knowledge of the facts and copies of all necessary documents (*e.g*. grievances, collective bargaining agreements, paystubs, letters) to establish the detailed facts that the charging party wants the Commission to consider. Although the facts that must be proven vary from case to case, the Commission has prepared *Guidelines for Submitting Written Evidence* that lists the facts necessary to prove the most common allegations. A copy of the Commission's *Guidelines for Submitting Written Evidence* is available on the Commission's web site at www.mass.gov/lrc. In its submission, the charging party should also explain why the facts presented violate the law. This legal argument should refer to prior cases decided by the Commission in similar situations. For a summary of selected decisions where the Commission has and has not found violations in certain circumstances, *see* Part IV, Summary of Decisions, paragraph F. Pursuant to 456 CMR 12.02, the charging party must serve a copy of its complete written submission, including

[3] Although M.G.L. c.150A refers to violations as "unfair labor practices" and M.G.L. c.150E refers to violations as "prohibited practices," the procedures for processing alleged violations of either law are identical. There are, however, differences in the *substance* of the two laws.

[4] M.G.L. c.150E refers to "labor organizations."

any affidavits, documents, and/or legal argument on the respondent and file a *certificate of service* with the Commission. Copies of blank certificate of service forms are available on the Commission's web site at www. mass.gov/lrc.

After the charging party has submitted its statement of facts and evidence and any legal argument, the respondent has an opportunity to file a written response. In its response, the respondent may refute the facts alleged by the charging party or disagree with the charging party's legal arguments. The respondent should attach affidavits from witnesses and relevant documents to support any factual statements. Pursuant to 456 CMR 12.02, the respondent must serve a copy of its complete written response, including any affidavits, documents, and/or legal argument on the charging party and file a *certificate of service* with the Commission.

After the charging party receives the respondent's response, the charging party may file with the Commission a further statement, supported by affidavits and/or documents as necessary, in order to explain, admit or deny the factual allegations contained in the respondent's response. Pursuant to 456 CMR 12.02, the charging party must serve a copy of any reply, including any affidavits, documents, and/or legal argument on the respondent and file a *certificate of service* with the Commission.

After all of the written investigation materials have been received, a panel of at least two Commissioners considers the case. Except in certain agency service fee cases,[5] the charging party has the burden to present sufficient evidence and legal argument to persuade the Commission that it has probable cause to believe that the respondent violated the law in the manner alleged by the charging party.

The most common circumstances under which the Commission will dismiss a charge without further hearing are the following: if necessary facts are missing from the submission; if the facts presented do not cause the Commission to believe that the Law has been violated; if the facts presented do not cause the Commission to believe that further proceedings would effectuate the purposes of the Law; or if the Commission concludes that the charging party has failed to make reasonable efforts to settle the matter. The Commission will issue a Complaint alleging that certain conduct violates the Law when the Commission has probable cause to believe that the alleged facts, if proven, would violate the Law. When the affidavits of the charging party's witnesses conflict with the affidavits of the respondent's witnesses, and the disputed facts, if proven, would violate the Law, the Commission usually will proceed to complaint.

[5] For more information about the burden of proof in agency service fee cases, see Part IV, Summary of Decisions, paragraph G.

However, bare allegations and unsupported general assertions will not satisfy a charging party's burden, particularly if the respondent has offered specific facts, supported by affidavits, to rebut the charging party's allegations.

Finally, the Commission has concluded that the purpose of the investigation process would not be best served by issuing subpoenas in connection with an investigation. As a result, the Commission generally does not issue its own subpoenas for investigations.

(a) Dismissal of a Charge

If the Commission dismisses a charge, a dismissal letter is sent to the parties informing them of the Commission's action.

(1) Request for Review

Within ten days of receipt of the dismissal letter, the charging party may write to the Commission following the procedures outlined in 456 CMR 15.04(3), and request that the Commission review its decision to dismiss the charge. In the request for review, the charging party should point to the specific information which the charging party contends warrants issuing a complaint; and should explain why the charging party believes a complaint should be issued. The respondent may write a letter to the Commission in response to the charging party's request for review within seven days.

(2) Commission Decision After Review

A panel of the Commissioners will consider the request for review and decide whether to issue a complaint or affirm the dismissal of the charge. If the dismissal is affirmed, the charging party may file an appeal of the dismissal with the Massachusetts Appeals Court, following procedures that are referenced in Part IV, Summary of Decisions, paragraph L.

(b) If a Complaint is Issued

When the Commission issues a complaint, it recites the facts and legal theories that give it probable cause to believe that the Law has been violated. If the charging party disagrees with the way that the complaint alleges the facts or the violation, the charging party should promptly call any discrepancies to the attention of the Commission by filing a motion to amend or clarify the complaint. The parties may also correct minor factual inaccuracies in the complaint by agreeing to joint stipulations of fact at the hearing.

Although the Commission issues the complaint in its own name, and must authorize all complaint allegations, the charging party is responsible for litigating the case. Similarly, when the Commission issues a complaint, it does so because there is probable cause to believe that the conduct alleged to have occurred could violate the Law or because no prior

case decides the same issues. The issuance of a complaint does not mean that the Commission has concluded that the Law has been violated.

(c) Complaint Litigation

(1) The Answer

After a complaint is authorized by the Commission, copies are sent by the Commission to the respondent and the charging party, as well as to any other interested parties. 456 CMR 15.06 requires the respondent to file an answer to the complaint within a specified time. The answer tells the charging party and the Commission which complaint allegations are disputed by the respondent.

(2) Motions for a Decision Without a Hearing

If either the respondent or the charging party believes that the pleadings (the complaint plus the answer) state undisputed facts sufficient to permit the Commission to make a decision in the case without a hearing, either party may request the Commission to issue a decision in the case without further hearing. Usually these motions (written statements of facts and law) are called either Motions for Summary Judgment or Motions for Judgment on the Pleadings. Any party who opposes such a motion may promptly write to the Commission arguing why the motion should not be granted.

(3) Prehearing Conferences

The Commission may schedule a conference prior to the hearing in order to explore settlement ideas and to encourage the parties to the hearing to agree to the introduction of documents, facts, or other evidence at the hearing. Sometimes this prehearing conference can be conducted by telephone. A party to the hearing may ask the hearing officer to schedule a prehearing conference.

(4) Stipulated Record

If the respondent and the charging party are able to agree to a statement of the material facts in the case, they may submit a written stipulation including all of the agreed upon facts and ask the Commission to issue a decision without a hearing. Each party may request permission to file a brief in the case to argue its position.

(5) The Hearing

456 CMR 13.00 explains the procedures which will be followed at a hearing. Prior to the hearing the parties may ask the Commission to issue subpoenas to compel the attendance of particular witnesses, or to compel someone to bring to the hearing particular documents. 456 CMR 13.12 governs this procedure. At the hearing, conducted by a Commission agent, the parties may represent themselves, or may be represented by

attorneys or others. Although the Commission hearing officer conducting the hearing will attempt to assist the parties by answering questions about the Commission's procedures, the hearing officer cannot act as the representative of a party, nor can the hearing officer give legal advice. The hearing officer is free, however, to ask questions of the parties and witnesses to clarify testimony, issues or positions.

The charging party will present its evidence first, by calling its witnesses and submitting any documentary evidence that it has to support the allegations in the complaint. The respondent has the opportunity to cross-examine the charging party's witnesses and to object to the introduction of evidence. An objection is stated at the time that a question is asked to protest the question as improper-- perhaps because it doesn't relate to the case or because it is unlikely to produce an accurate or reliable answer. Objections may also be stated to witness answers or to documents. Although the Commission is not required to follow the technical rules of evidence, evidence is usually most helpful if it is consistent with the rules of evidence. The hearing officer will rule on all objections at the hearing. Hearing officer rulings may be appealed to the Commissioners by following the interlocutory appeal procedure specified in 456 CMR 13.03.

After the charging party has presented its case, it rests (meaning that it has no further evidence to present). Then the respondent presents its evidence while the charging party has the opportunity to cross-examine the respondent's witnesses and to object to the respondent's introduction of evidence. When the respondent rests, the hearing officer may permit the charging party to introduce some rebuttal evidence (subject to the respondent's right to cross-examine or object) to refute specific points raised in the respondent's presentation.

The facts that must be proven to support or defend against the complaint depend upon the allegations contained in the complaint. Generally, any allegation that has been denied must be proven by the charging party. For a further discussion of the elements of different types of charges, *see* Part IV, Summary of Decisions, paragraph F.

The decision in a case will be based only upon evidence submitted at the hearing or through joint stipulations. Evidence previously submitted at the investigation is not part of the "record" at the hearing, but it can be resubmitted to the hearing officer with a request that it be considered.

At the conclusion of the presentation of evidence, the parties are entitled to argue orally in support of their position. Alternatively, the hearing officer may permit the parties to submit written briefs following the hearing. Either in oral argument, or in a written brief, each party should point to the evidence and to the court and Commission case decisions that support its position.

a) Hearings Designated for Hearing Officer Decision

If the Commission designates, or redesignates, a hearing as a hearing in which a hearing officer decision will issue in the first instance, the hearing officer who conducts the hearing also issues the decision in the case. If the hearing officer's decision is not appealed within ten (10) days, it becomes final and binding on the parties. Hearing officer decisions are not binding on the Commission and do not necessarily represent the law that the Commission will apply in other cases. The Commission, however, often adopts the reasoning of hearing officer decisions.

If the hearing officer's decision is appealed to the Commissioners following the procedures specified in 456 CMR 13.15, the Commission will review the hearing officer's decision and issue a decision on appeal. The Commission's decision can be appealed to the Appeals Court.

b) Hearings Designated for Commission Decision

If the Commission designates or redesignates a hearing as a hearing in which the Commission will issue a decision in the first instance, recommended findings will usually be issued first. The parties may then challenge the recommended findings before they are adopted by the Commission. The full procedure is described in 456 CMR 13.02(2). The Commission's final decision can also be appealed to the Appeals Court.

c) Compliance Proceedings

If the Commission or the hearing officer in an unappealed hearing officer decision orders the respondent to remedy the prohibited practice,[6] the respondent is responsible for informing the Commission of the steps that have been taken to comply with the remedial order. If a charging party claims that a respondent has not done everything that the decision ordered, the charging party should promptly notify the Commission in writing of any part of the order that has not been fulfilled and give the Commission evidence (such as affidavits from knowledgeable witnesses, or documents showing relevant facts) to support its contentions. The Commission will invite the respondent to tell the Commission how it has complied and will determine whether the respondent has failed to comply. If the respondent refuses to comply with the order, the Commission can institute enforcement proceedings in the Massachusetts Appeals Court. If, however, there is a dispute about what the order requires or about whether the respondent has complied, the Commission may order further proceedings at the Commission. 456 CMR 16.08 describes compliance procedures.

[6] The Commission may order remedies for unfair labor practices but has no authority to order punitive sanctions or attorneys' fees.

d) Appeals to Court

Any party dissatisfied with the Commission's decision in a case (either after a Commission Decision, or after a Commission Decision On Appeal of a Hearing Officer Decision) may file a notice of appeal within 30 days of the date of the decision with the Commission claiming a right to appeal the Commission's decision to the Massachusetts Appeals Court.

C. STRIKE INVESTIGATIONS

Public employees may not strike or withhold their services, nor may public employees or their unions encourage or condone any public employee strike. The Law specifies that the employers shall file a Petition for a Strike Investigation whenever the employer believes that a public employee strike is occurring or about to occur. M.G.L. c.150E, §9A(b). There is no specific form for filing a Petition for a Strike Investigation. Rather, 456 CMR 16.03 explains the procedure for filing a Petition for a Strike Investigation.

Generally, when the Commission receives a petition for a strike investigation, the Commission promptly schedules an investigation. The employer will be given a copy of the Commission's Notice of Investigation, which tells the parties when and where the investigation will be held. The employer is responsible for serving copies of the notice upon any respondent named in the petition for a strike investigation.

At the investigation, the public employer bears the burden to prove that a public employee strike is occurring or about to occur. To meet this burden of proof, the employer may present witnesses or documentary evidence establishing that public employees are failing to perform required services. The public employees and the union alleged to be on strike may appear at the investigation and present witnesses or other evidence to explain their actions. Generally, if the public employees or the union do not appear at the investigation after having received notice of the time and place, the Commission will accept the employer's evidence as uncontested.

The Commission has concluded that the purpose of the strike investigation process would not be best served by issuing subpoenas in connection with the strike investigation. As a result, the Commission generally does not issue its own subpoenas for strike investigations.

If the Commission concludes that a strike is occurring or about to occur, it issues a written directive to the striking employees and/or their union setting requirements which must be met. In addition, if the strike continues, the Commission may begin proceedings in Superior Court. For a summary of some of the cases in which the Commission has considered whether a strike was occurring and a discussion of strike cases that have involved court proceedings, *see* Part IV, Summary of Decisions, paragraph J,

D. REQUESTS FOR BINDING ARBITRATION

The Commission may order the parties to a written collective bargaining agreement to submit an unresolved grievance to grievance arbitration if the parties' collective bargaining agreement does not contain a final and binding arbitration procedure. See M.G.L. c.150E, §8. The request must be on a form specified by the Commission. The procedures for filing a request for binding arbitration are explained in 456 CMR 16.02. Such a request must be filed within sixty days of the date that the contractual grievance procedure, if any, has been exhausted.

E. REQUESTS FOR ADVISORY OPINIONS

The Commission does not generally issue advisory opinions, instead it issues rulings in cases after investigation or hearing. The sole exception to this policy is the Commission's issuance of an advisory ruling to determine whether a bargaining proposal is a mandatory subject of bargaining within the meaning of M.G.L. c.150E, §6. 456 CMR 16.06 explains the procedure by which a party to collective bargaining negotiations can request such an advisory ruling whenever the other party to negotiations challenges the negotiability of a proposal.

PART II: STATUTES

[1] Although M.G.L. c.150A primarily covers private employers, certain public authorities, including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority are covered by M.G.L. c.150A. *See*, M.G.L. c.161A; Chapter 760 of the Acts of 1962.

M.G.L. c.150A: LABOR RELATIONS (Private Employees)

Section 1. Public policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing industry and trade by (a) impairing the efficiency, safety or operation of the instrumentalities of industry and trade; (b) occurring in the current of industry and trade; (c) materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods, or the prices of such materials or goods; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for such goods in industry or trade.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects industry and trade, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards industry and trade from injury, impairment or interruption, and promotes the flow of industry and trade by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the commonwealth to eliminate the causes of certain substantial obstructions to the free flow of industry and trade and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

It is further declared to be the policy of the commonwealth, in the interests of preserving the continuity and improving the quality of health care within the commonwealth: (a) to promote collective bargaining between health care facilities and their nurse employees and nonprofessional employees, except members of religious orders, irrespective of whether or not any such facility is operated for profit or as a public charity; (b) to protect the right of nurse employees and nonprofessional employees of health care facilities, except members of religious orders, to organize and select collective bargaining representatives of their own choosing; (c) to prevent lockouts, strikes, slowdowns or withholding of goods and services in health care facilities; and (d) to provide for arbitration of disputes or grievances arising

between health care facilities and their nurse employees and nonprofessional employees if they cannot be adjusted through collective bargaining.

It is further declared to be the policy of the commonwealth, in the interest of allowing certain employees full freedom of associations and to eliminate strife and other obstructions: (a) to promote collective bargaining between nonprofit institutions and their nonprofessional employees, except members of religious orders, (b) to protect the right of nonprofessional employees of nonprofit institutions, except members of religious orders, to organize and select collective bargaining representatives of their own choosing, and (c) to prevent lockouts, strikes, slowdowns or withholding of goods or services in nonprofit institutions.

It is further declared to be the policy of the commonwealth, in the interest of allowing certain employees full freedom of association and to eliminate strife and other obstructions: (a) to promote collective bargaining between vendors who contract with or receive funds from the commonwealth or its political subdivisions, or both, to provide social, protective, legal, medical, custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions and their employees; (b) to protect the right of employees of such vendors to organize and select collective bargaining representatives of their own choosing; (c) to prevent lockouts, strikes, slowdowns or withholding of goods or services.

Section 2. Definitions.

When used in this chapter

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The word "employer" shall include any person acting in the interest of an employer, directly or indirectly, and shall include any health care facility, any nonprofit institution, and any vendor who contracts with or receives funds from the commonwealth or its political subdivisions, or both, to provide social, protective, legal, medical, custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions, but shall not include the commonwealth or political subdivision thereof, except in the case of a health care facility, or any labor organization, other than when acting as an employer, or anyone acting in the capacity of officer or agent of such labor organization.

(3) Except as otherwise provided in section three A, the word "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, and shall include any nurse or nonprofessional employee of a health care facility or of any nonprofit institution, except members of religious orders, or any employees of vendors who contract with or receive funds from the commonwealth or its political subdivisions to provide social, protective, legal, medical,

custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions, but shall not include any individual employed as an agricultural worker, except as provided in section five A, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "unfair labor practice" means any unfair labor practice listed in section four.

(7) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee.

(8) The term "commission" means the labor relations commission existing under section nine O of chapter twenty-three.

(9) The term "one-man unit" means a single employee of an employer who employs more than one employee in the same occupation within the commonwealth.

(10) The term "health care facility" shall include any person, including the commonwealth or any political subdivision thereof, acting in the interest of an employer, directly or indirectly, and engaged, whether or not for profit or as a public charity, in the operation of a general, mental, chronic disease, tuberculosis, or other type of hospital, clinic or infirmary, of a convalescent or nursing home, of a visiting nurses association, of a public health agency, or of any related facility such as a laboratory, an outpatient department, a nurses' home or a training facility.

(11) The term "nurse employee" means any registered nurse or licensed practical nurse, except that it does not include any member of a religious order.

Section 3. Rights of employees.

Employees, or a single employee in a one-man unit, shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 3A. Domestic service employee defined; violations; discharge; presumption; damages; costs.

Anything contained in this chapter to the contrary notwithstanding as regards sections one, two, three, four (1), four (4), ten, eleven and twelve, the term "employee" shall include any individual, over the age of seventeen, employed in the domestic service of any family or person at his home for not less than sixteen hours per week. In the event of a violation of section four (1) or four (4) by an employer of any such individual, the department of labor and workforce development shall have all necessary and appropriate powers to conduct an investigation of such violation. The discharge of any such individual, within three months after the making of a report or complaint of any violation of section four (1) or four (4), known to the employer, shall create a rebuttable presumption that such discharge is a reprisal against such individual. In such case, the employer of such individual shall be liable for damages which shall not be less than one month's wages nor more than two months' wages of such individual, and the costs of the suit, including a reasonable attorney's fee.

Section 4. Unfair labor practices by employers.

It shall be an unfair labor practice for an employer[a]

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that, subject to rules and regulations made and published by the commission pursuant to section nine R of chapter twenty-three, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay. An employer shall not be prohibited from paying regular initiation fees, dues and assessments to any labor organization in which he is a member or is eligible for membership.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization; provided, that nothing in this chapter shall preclude an employer from making and carrying out, except as provided in subsection six hereof, an agreement with a labor organization (not established, maintained or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in subsection (a) of section five in the appropriate collective bargaining unit covered by such agreement when made, but no such agreement shall be deemed to apply to any employee who is not eligible for full membership and voting rights in such labor organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of subsection (a) of section five.

(6) To discharge or otherwise discriminate against any employee because he is not a member in good standing of a labor organization with whom the employer has made an agreement to require as a condition of employment membership therein, unless

(A) Such labor organization shall have certified to the employer that such employee[a]

(1) Was denied admission to, or deprived of, membership in good standing as a result of a bona fide occupational disqualification or the administration of discipline; and

(2) Has exhausted the remedies available to him within the labor organization including any right of appeal permitted by its constitution or by-laws; and

(B) Such employee shall have exhausted the remedies available to him under sections six A and six B.

Section 4A. Unfair labor practices by individuals or labor organizations.

It shall be an unfair labor practice for any person or labor organization[a]

(1) To seize or occupy unlawfully private property as a means of forcing settlement of a labor dispute; or

(2) To authorize or engage in any strike, slowdown, boycott or other concerted cessation of work or withholding of patronage for the purpose of[a]

(a) Bringing about, directly or indirectly, the commission of any unfair labor practice, or

(b) Injuring or interfering with the trade or business of any person because such person has refused to commit an unfair labor practice; or

(c) Interfering with, restraining or coercing employees in their choice or rejection of representatives for the purpose of collective bargaining after the commission has determined in a proceeding under section five that such employees do not desire to be represented by such labor organization; or

(3) To aid in any concerted activities of the types described in this section by giving direction or guidance in the conduct thereof or by providing funds for the payment of strike, unemployment or other benefits to persons participating therein.

Section 4B. Refusal to bargain collectively with employer.

It shall be an unfair labor practice for a labor organization to refuse to bargain collectively with any employer who has recognized it as the exclusive representative of employees in a unit appropriate for the purposes of collective bargaining.

Section 4C. Health care facilities; unfair labor practices by employers or employees.

Section 4C. It shall be an unfair labor practice:

(1) For any health care facility or any charitable home for the aged to institute, declare or cause, or to attempt to institute, declare or cause, any lockout of any of its nurse or nonprofessional employees; or

(2) For any nurse or nonprofessional employee of a health care facility or of any charitable home for the aged, or for a representative of any such employee, or for any other person, to engage in, induce or encourage any strike, work stoppage, slowdown or withholding of customary goods or services by such employees or other persons at such health care facility or home.

Section 5. Representatives; determining and certifying; grievances; units; review; proceedings to enforce or review orders.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, including representatives selected or designated by an individual in a one-man unit, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The commission shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of this chapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, profession or craft unit, plant unit, or subdivision thereof, or a one-man unit where the commission deems such unit to be appropriate; provided that, in any case where the majority of employees of a particular profession or craft shall so decide, the commission shall designate such profession or craft as a unit appropriate for the purpose of collective bargaining; and provided, further, that, for purposes of this chapter, registered nurses and licensed practical nurses shall not be deemed to be members of the same particular profession.

(c) Whenever a question affecting industry, trade or health care arises concerning the representation of employees, the commission may investigate such controversy and certify to the parties, in writing, the name or names of the representatives who have been designated or selected. For the purpose of this section, the commission shall be authorized to investigate petitions requesting the decertification of an exclusive representative. In any such investigation, the commission shall provide for an appropriate hearing upon due notice either in conjunction with a proceeding under section six or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives. The commission may establish such rules or regulations as it deems appropriate to effectuate the policies of this chapter for the filing of petitions for investigation and certification by employers or employees or their representatives and shall include therein provision for the filing of a petition by an employer whenever it is alleged

(1) That two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in a bargaining unit or units claimed by them to be appropriate; or

(2) That a labor organization not theretofore recognized as the representative of a majority of the employees in the bargaining unit claimed by it to be appropriate has requested the employer to bargain with it as the exclusive representative of such employees, or without such request is attempting to secure such recognition by strike, slowdown, boycott or other concerted cessation of work or withholding of patronage.

(d) Any hearing under subsection (c) of this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case; in addition, any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require.

(e) Whenever an order of the commission made pursuant to subsection (c) of section six is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section six and thereupon the decree of the court enforcing, modifying or setting aside in whole or in part the order of the commission shall be made and entered upon the pleadings, testimony and proceedings set forth in such transcript.

Section 5A. Agricultural workers; representatives

In the case of a person engaged in agriculture, as hereinafter defined, and having a permanent hired work force of more than four agricultural workers who are not members of his family, the provisions of section five shall apply; provided that only the employer unit shall be deemed appropriate for collective bargaining purposes; and provided further that nothing in this section nor in said section five shall be construed as constituting authority for any action or proceeding to nullify, amend or otherwise modify any contract or agreement, or any provision thereof, which is reached by any such person for the seasonal employment of agricultural workers with the official sanction either of the government of any territorial possession of the United States or of the United States department of labor. As used in this section, the term "agriculture" includes horticulture, floriculture and any other commercial enterprise involving the production of food or fiber.

Section 6. Prevention of unfair labor practices; powers of commission; proceedings; judicial review.

(a) The commission is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in sections four, four A, four B and four C affecting industry, trade or health care. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent or agency designated by the commission for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent or agency conducting the hearing or the commission in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the commission, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) If upon the record before him such member or agent shall determine that an unfair labor practice has been committed by a person named in the complaint, he shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If the member or agent determines that an unfair labor practice has not been committed, he shall issue an order dismissing the complaint. An order issued pursuant to this subsection shall become final and binding unless, within ten days after notice thereof, any party requests review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the commission requests, upon a transcript of the testimony taken at the preliminary hearing, if any, together with such other testimony as the commission may require.

If upon the record before it the commission determines that an unfair practice has been committed it shall state its findings of fact and issue and cause to be served on the person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If upon the record before it the commission determines that an unfair labor practice has not been committed, it shall state its findings of fact and shall issue an order dismissing this complaint.

(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the commission may at any time, upon reasonable notice and in such manner as it shall

deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The commission may institute appropriate proceedings in the appeals court for enforcement of its final orders.

(f) Any party aggrieved by a final order of the commission may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order.

The proceedings in the appeals court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A.

Section 6A. Denial of admission to, and suspension or expulsion from, a labor organization; proceedings for relief; voting rights of non-participants in insurance plans and of local organizations in conventions.

Any employee who is required as a condition of employment to be a member in good standing of a labor organization may file with the commission a charge alleging (1) that, although eligible to membership, he has been unfairly denied admission to, or unfairly suspended or expelled from membership in, such organization for reasons other than malfeasance in office or nonpayment of regular initiation fees, dues, or assessments and (2) that such labor organization has requested, or is about to request, his employer to discharge or otherwise discriminate against him because of his failure to maintain membership in good standing in such organization; provided, that such charge shall be filed not more than fifteen days after notice of such request has been given the employee by the labor organization. Upon filing of such charge, the commission shall have power to issue and cause to be served upon the labor organization a complaint stating the charge in that respect and containing a notice of hearing. The notice shall be given and the subsequent proceedings shall be conducted in the manner provided in section six. If upon all the evidence the commission shall determine that the employee was unfairly denied admission to membership in such organization, or that such discipline

(1) Was imposed by the labor organization in violation of its constitution and by-laws; or

(2) Was imposed without a fair trial, including an adequate hearing and opportunity to defend; or

(3) Was not warranted by the offense, if any, committed by the employee against the labor organization; or

(4) Is not consistent with the established public policy of the commonwealth;

then the commission shall state its determinations and shall issue and cause to be served on the labor organization an order requiring it, in its discretion, either to admit or restore the employee to membership in good standing together with full voting rights, or else to refrain from seeking to bring about any discrimination against him in his employment because he is not a member in good standing, and to return to him such union dues and assessments as may have been collected from him during the period of his suspension or expulsion from

the union. If the commission shall not make such a determination after hearing, it shall enter an order dismissing the charge filed by the employee.

Nothing contained in this section or in section four shall be deemed to require a labor organization as a condition of making or enforcing a contract requiring membership therein as a condition of employment, to accord to non-participants in an insurance plan the right to vote on questions pertaining thereto or to grant local organizations voting rights in a convention proportionate to their membership.

Section 6B. Review of order of commission.

Any person aggrieved by a final order of the commission under section six A granting or denying relief, may obtain a review of such order in the manner provided in section six.

Section 6C. Payment of dues and assessments during disciplinary and legal proceedings.

During any disciplinary proceedings within a labor organization or any proceedings under sections six A and six B, or either of them, the employee shall continue to pay the regular union dues and assessments.

Section 7. Powers of commission and courts relative to hearings and investigations; self-incrimination; service of papers; witness fees; papers and information furnished by other departments.

For the purpose of all hearings and investigations which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by sections five, six, six A and six B

(1) The commission, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission, its member, agent or agency conducting the hearing or investigation. Any member of the commission, or any agent or agency designated by the commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the commonwealth, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, the superior court within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent or agency, there to produce evidence if so ordered, or there to give testimony,

touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders and other process and papers of the commission, its member, agent or agency may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of service of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the commission, its member, agent or agency shall be paid the same fees and mileage that are paid witnesses in civil cases before the courts of the commonwealth, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the commonwealth.

(5) All process of any court to which application may be made under this chapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the commonwealth, when directed by the governor, shall furnish the commission, upon its requests, all records, papers and information in their possession relating to any matter before the commission.

Section 8. Interference with member or agent of commission.

Any person who shall wilfully resist, prevent, impede or interfere with any member of the commission or any of its agents or agencies in the performance of duties pursuant to this chapter shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

Section 9. Right to strike.

Nothing in this chapter, except as provided in sections four A and four C, shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Section 9A. Grievances or disputes between health care facilities and nurses.

(a) In the event of the existence of a grievance or a dispute between a health care facility or a charitable home for the aged and an organization designated or selected as the exclusive representative of any nurse or nonprofessional employee of such facility or of such home for the purposes of collective bargaining in accordance with section five, and if such grievance or dispute has not been settled by collective bargaining after reasonable effort so to do by either party, and if there is no collective bargaining agreement in force between the parties, or such an agreement is in force but it contains no provision to submit the current grievance or dispute, as the case may be, to arbitration, the procedures provided by chapter one hundred and fifty C shall be available, on application of an aggrieved party, to determine the controversy as though the parties had negotiated a collective bargaining agreement containing a provision as described in section one of said chapter one hundred and fifty C to submit to arbitration and such agreement were then in force; provided, however, that the procedures provided by said chapter one hundred and fifty C shall not be available to assist or require arbitration of any grievance or dispute involving a health care facility owned and operated by the commonwealth or a political subdivision thereof; and provided, further, that in the case of a grievance or a dispute involving any health care facility not owned and operated by the commonwealth or a political subdivision thereof or involving a charitable home for the aged it shall not be a ground for refusing to grant an order for arbitration under paragraph (a) of section two of said chapter one hundred and fifty C, or for granting an application for stay of an arbitration proceeding under paragraph (b) of said section, or for vacating an award under clause (5) of paragraph (a) of section eleven of said chapter one hundred and fifty C, that there is no agreement to arbitrate.

(b) As used in this section the word "grievance" shall mean any controversy or claim arising out of or relating to the interpretation, application or breach of the provisions of an existing collective bargaining agreement between a health care facility or charitable home for the aged and any of its nurse or nonprofessional employees or their representatives; the word "dispute" shall mean all other controversies, claims or disputes between a health care facility or charitable home for the aged and any of its nurse or nonprofessional employees, or their representatives concerning rates of pay, hours or other terms or conditions of employment in such facility or home, including, but not limited to, controversies, claims or disputes arising in the course of negotiation, fixing, maintaining, changing or arranging any such terms or conditions.

Section 10. Conflict of laws; federal statutes and regulations.

(a) Wherever the application of the provisions of any other law of this commonwealth conflicts with the application of the provisions of this chapter, this chapter shall prevail.

(b) This chapter shall not be deemed applicable to any unfair labor practice involving employees who are subject to and protected by the Federal Railway Labor Act, or to any unfair labor practice governed exclusively by the national labor relations act or other federal statute or regulations issued pursuant thereto, unless the federal agency administering such act, statute or regulation has declined to assert jurisdiction thereof, or except where

such federal agency has conceded to the commission jurisdiction over any such case or proceedings.

Section 11. Partial invalidity.

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 12. Title of statute.

This chapter may be cited as the "State Labor Relations Law".

M.G.L. c.150E. LABOR RELATIONS: PUBLIC EMPLOYEES

Section 1. Definitions.

The following words and phrases as used in this chapter shall have the following meaning unless the context clearly requires otherwise:

"Board", the board of conciliation and arbitration established under section seven of chapter twenty-three.

"Commission", the labor relations commission established under section nine O of chapter twenty-three.

"Cost items", the provisions of a collective bargaining agreement which require an appropriation by a legislative body.

"Employee" or "public employee", any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission, and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general. Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter.

"Employee organization", any lawful association, organization, federation, council, or labor union, the membership of which includes public employees, and assists its members to improve their wages, hours, and conditions of employment.

"Employer" or "public employer", the commonwealth acting through the commissioner of administration, or any county, city, town, district, or other political subdivision acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees, but excluding authorities created pursuant to chapter one hundred and sixty-one A and those authorities included under the provisions of chapter seven hundred and sixty of the acts of nineteen hundred and sixty-two. In the case of school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives. For this purpose, the chief executive officer of a city or town or his designee shall participate and vote as a member of the city or town school committee; provided, however, that if there is no town manager or town administrator in a town, the chairman of the board of selectmen or his designee shall so participate and vote. In the

case of a regional school district, said chief executive officers or chairmen of boards of selectmen, as the case may be, of the member cities and towns shall, in accordance with regulations to be promulgated by the board of education, elect one of their number to represent them pursuant to the requirements of this section. In the case of employees of the system of public institutions of higher education, the employer shall mean the board of higher education or any individual who is designated to represent it and act in its interest in dealing with employees, except that the employer of employees of the University of Massachusetts shall be the board of trustees of the university or any individual who is designated to represent it and act in its interest in dealing with employees. In the case of judicial employees, the employer shall be the chief administrative justice of the trial court or any individual who is designated by him to represent him or act in his interest in dealing with judicial employees. In the case of employees of the state lottery commission, employer shall mean the state lottery commission or its designee. In the case of employees of the Massachusetts Water Resources Authority, the employer shall mean the Massachusetts Water Resources Authority. In the case of employees of the Suffolk county sheriff's department, employer shall mean the sheriff of Suffolk county or any individual who is designated by him to represent him or act in his interest in dealing with such employees.

"Incremental cost items", the provisions of a collective bargaining agreement that require, in respect of any fiscal year, an appropriation by a legislative body that is greater than the appropriation so required in the preceding fiscal year; provided, however, that in respect of the first fiscal year or portion thereof during which an agreement has effect, "incremental cost items" shall mean the provisions of a collective agreement that require an appropriation by a legislative body of monies that are newly required by the employer to discharge the obligations arising under the terms of such agreement.

"Legislative body", the general court in the case of the commonwealth or a county, the city council or town meeting in the case of a city, town or district, or any body which has the power of appropriation with respect to an employer as defined in this chapter.

"Professional employee", any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes. Professional employee shall include a detective, member of a detective bureau or police officer who is primarily engaged in investigative work in any city or town police department which employs more than four hundred people.

"Strike", a public employee's refusal, in concerted action with others, to report for duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring

immediately preceding the alleged strike, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment.

Section 2. Collective bargaining; self organization.

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve.

Section 3. Bargaining units; rules and regulations; procedures; officers excepted.

The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no uniformed member of the department subordinate to a fire commission, fire commissioner, public safety director, board of engineers or chief of department shall be classified as a professional, confidential, executive, administrative or other managerial employee for the purpose of this chapter.

No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director or chief of a department or agency of the commonwealth or any political subdivision thereof, or clerk, temporary clerk or assistant clerk of any court, or chief probation officer or acting chief probation officer of any court or region, including, without limitation within the term, any division or department of the trial court, or any other managerial or confidential employee shall be included in an appropriate bargaining unit or entitled to coverage under this chapter.

The appropriate bargaining unit in the case of the uniformed members of the state police shall be all such uniformed members in titles below the rank of lieutenant. The appropriate bargaining units for judicial employees within the provisions of this chapter shall be a public safety professional unit composed of all probation officers and court officers, and a unit composed of all nonmanagerial or nonconfidential staff and clerical personnel employed by the judiciary; provided that court officers in the superior court department for

Suffolk and Middlesex counties shall be represented by such other bargaining units as they may elect.

The appropriate bargaining unit in the case of employees of the state lottery commission shall be all employees below the rank of assistant director.

Section 4. Exclusive representative; hearing; election; stipulation; certification; review.

Public employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining. All notices relative to a representation petition and all elections shall be posted at the request of the commission ten days prior to a hearing in a conspicuous place where the affected employees are employed.

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary

statements filed by the parties, if any, together with such other evidence as the commission may require.

Section 5. Exclusive representative; powers and duties; grievances.

The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

Section 6. Negotiations; meetings.

The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards or productivity and performance, and any other terms and conditions of employment, including without limitation, in the case of teaching personnel employed by a school committee, class size and workload, but such obligation shall not compel either party to agree to a proposal or make a concession; provided, however, that in no event shall the right of any employee to run as a candidate for or to hold elective office be deemed to be within the scope of negotiation.

Section 7. Collective bargaining agreements; term; appropriation requests; provisions; legal conflicts, priority of agreement.

(a) Any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years. The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be filed with the commission and with the house and senate committees on ways and means forthwith by the employer.

(b) The employer, other than the board of higher education or the board of trustees of the University of Massachusetts, a county sheriff or the state lottery commission, shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining. The provisions

of the preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

(c) The provisions of this paragraph shall apply to the board of higher education, the board of trustees of the University of Massachusetts, a county sheriff and the state lottery commission.

Every such employer shall submit to the governor, within thirty days after the date on which a collective bargaining agreement is executed by the parties, a request for an appropriation necessary to fund such incremental cost items contained therein as are required to be funded in the then current fiscal year, provided, however, that if such agreement first has effect in a subsequent fiscal year, such request shall be submitted pursuant to the provisions of this paragraph. Every such employer shall append to such request an estimate of the monies necessary to fund such incremental cost items contained therein as are required to be funded in each fiscal year, during the term of the agreement, subsequent to the fiscal year for which such request is made and shall submit to the general court within the aforesaid thirty days, a copy of such request and such appended estimate; provided, further, that every such employer shall append to such request copies of each said collective bargaining agreement, together with documentation and analyses of all changes to be made in the schedules of permanent and temporary positions required by said agreement. Whenever the governor shall have failed, within forty-five days from the date on which such request shall have been received by him, to recommend to the general court that the general court appropriate the monies so requested, the request shall be referred back to the parties for further bargaining.

(d) If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one or of a police commissioner or other head of a police or public safety department of a municipality; the regulations of a fire chief or other head of a fire department pursuant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

(a) the second paragraph of section twenty-eight of chapter seven;

(a1/2) section six E of chapter twenty-one;

(b) sections fifty to fifty-six, inclusive, of chapter thirty-five;

(b1/2) section seventeen I of chapter one hundred and eighty;

(c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;

(d) sections twenty-one A and twenty-one B of chapter forty;

(e) sections one hundred and eight D to one hundred and eight I, inclusive, and sections one hundred and eleven to one hundred and eleven I, inclusive, of chapter forty-one;

(f) section thirty-three A of chapter forty-four;

(g) sections fifty-seven to fifty-nine, inclusive, of chapter forty-eight;

(g 1/2) section sixty-two of chapter ninety-two;

(h) sections fourteen to seventeen E, inclusive, of chapter one hundred and forty-seven;

(i) sections thirty to forty-two, inclusive, of chapter one hundred and forty-nine;

(j) section twenty-eight A of chapter seven;

(k) sections forty-five to fifty, inclusive, of chapter thirty;

(l) sections thirty, thirty-three and thirty-nine of chapter two hundred and seventeen;

(m) sections sixty-one, sixty-three and sixty-eight of chapter two hundred and eighteen;

(n) sections sixty-nine to seventy-three, inclusive, and seventy-five, eighty and eighty-nine of chapter two hundred and twenty-one;

(0) section fifty-three C of chapter two hundred and sixty-two;

(p) sections eighty-four, eighty-five, eighty-nine, ninety-four and ninety-nine B of chapter two hundred and seventy-six;

(q) section eight of chapter two hundred and eleven B, the terms of the collective bargaining agreement shall prevail.

Section 8. Grievance procedure; arbitration.

The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provisions of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections thirty-nine and forty-one to forty-five, inclusive, of chapter thirty-one, section sixteen of chapter thirty-two, or sections forty-two through forty-three A, inclusive, of chapter seventy-one. Where binding arbitration is provided under the terms of a collective bargaining agreement as a means of resolving grievances concerning job abolition, demotion, promotion, layoff, recall, or appointment and

where an employee elects such binding arbitration as the method of resolution under said collective bargaining agreement, such binding arbitration shall be the exclusive procedure for resolving any such grievance, notwithstanding any contrary provisions of sections thirty-seven, thirty-eight, forty-two to forty-three A, inclusive, and section fifty-nine B of chapter seventy-one.

Section 9. Impasses in negotiations.

After a reasonable period of negotiation over the terms of a collective bargaining agreement, either party or the parties acting jointly may petition the board for determination of the existence of an impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine if the parties have negotiated for a reasonable period of time and if an impasse exists, within ten days of the receipt of such petition, the board shall notify the parties of the results of its investigation. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

Within five days after such determination, the board shall appoint a mediator to assist the parties in the resolution of the impasse. In the alternative, the parties may agree upon a person to serve as a mediator and shall notify the board of such agreement and choice of mediator. Any such mediator shall be empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for said purpose of resolving the impasse and negotiating such an agreement.

After a reasonable period of mediation from the date of appointment, said mediator shall issue to the board a report indicating the results of his services in resolving the impasse.

If the impasse continues after the conclusion of mediation, either party or the parties acting jointly may petition the board to initiate fact-finding proceedings. Upon receipt of such petition, the board shall appoint a fact-finder, representative of the public, from a list of qualified persons maintained by the board. In the alternative, the parties may agree upon a person to serve as fact-finder and shall notify the board of such agreement and choice of fact-finder. No person shall be named as a fact-finder who has represented an employer or employee organization within the preceding twelve months. The fact-finder shall be subject to the rules of the board and shall, in addition to powers delegated to him by the board, have the power to mediate and to make recommendations for the resolution of the impasse. The fact-finder shall transmit his findings and any recommendations for the resolution of the impasse to the board and to both parties within thirty days after the record is closed. If the impasse remains unresolved ten days after the transmittal of such findings and recommendations, the board shall make them public.

The parties by their own agreement may mutually waive the fact-finding provisions contained herein and may petition the board for arbitration pursuant to sections four or four B of chapter one thousand and seventy-eight of the acts of nineteen hundred and seventy-three when applicable. Said waiver shall not constitute a bar to any arbitration award.

Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an impasse shall be binding on the parties and on the appropriate legislative body and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty C, provided that said arbitration proceeding has been authorized by the appropriate legislative body or in the case of school employees, by the appropriate school committee.

If the impasse continues after the publication of the fact-finder's report, the issues in dispute shall be returned to the parties for further bargaining.

Any time limitations prescribed in this section may be extended by mutual agreement of the parties and the board.

Upon the filing of a petition pursuant to this section for a determination of an impasse following negotiations for a successor agreement, an employer shall not implement unilateral changes until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed and the terms and conditions of employment shall continue in effect until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed; provided, however, that nothing contained herein shall prohibit the parties from extending the terms and conditions of such a collective bargaining agreement by mutual agreement for a period of time in excess of the aforementioned time. For purposes of this paragraph, the board shall certify to the parties that the collective bargaining process, including mediation, fact finding or arbitration, if applicable, has been completed.

Any person acting as a mediator in a labor dispute, including any person acting as such pursuant to the provisions of this chapter, who receives information as a mediator relating to the labor dispute shall not be required to reveal such information received by him in the course of mediation in any administrative, civil or arbitration proceeding. Nothing herein contained shall apply to any criminal proceedings.

Section 9A. Strikes prohibited; investigation; enforcement proceedings.

(a) No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

(b) Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immediately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

Section 10. Prohibited practices.

(a) It shall be a prohibited practice for a public employer or its designated representative to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;

(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by an employee organization;

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section six;

(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in sections eight and nine;

(b) It shall be a prohibited practice for an employee organization or its designated agent to:

(1) Interfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter;

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section six;

(3) Refuse to participate in good faith in the mediation, fact finding and arbitration procedures set forth in sections eight and nine.

Section 11. Complaints; investigation; hearing; orders; review.

When a complaint is made to the commission that a practice prohibited by section ten has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. The commission may dismiss a complaint without a hearing if it finds no probable cause to believe that a violation of this chapter has occurred or if it otherwise determines that further proceedings would not effectuate the purposes of this chapter. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The employer, the employee organization or the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such employer, such employee organization or such person shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission any person may be allowed to intervene in such proceeding.

In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts. While retaining jurisdiction the commission may refer to the board or a joint labor management committee any matter alleging a refusal to bargain in good faith as required by section ten.

Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in section ten and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the commission shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued the commission shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

Upon any complaint made under this section the commission in its discretion may order that the hearing be conducted by a member or agent of the commission. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission, any person may be allowed to intervene in such proceeding. In any hearing the member or agent shall not be bound by the technical rules of evidence prevailing in the courts. At the conclusion of the hearing, the member or agent shall determine whether a practice prohibited under section ten has been committed and if so, he shall issue an order requiring it or him to cease and desist from such prohibited practice. If the member or agent determines that a practice prohibited under section ten has not been committed, he shall issue an order dismissing the complaint. Any order issued pursuant to this paragraph shall become final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or upon such portions of the record of the hearing as the parties or commission may designate. The record in such cases shall consist of the pleadings, motions, rulings and the testimony taken at the hearing. The testimony may be preserve by a taped recording or by stenographic transcription, at the determination of the commission.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and shall issue a final order dismissing the complaint. The commission may institute appropriate proceedings in the appeals court for enforcement of its final orders. Any party aggrieved by a final order of the commission may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order. The proceedings in the appeals court shall, insofar as

applicable, be governed by the provisions of section fourteen of chapter thirty A. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the commission's order.

Section 12. Service fee; imposition; amount; discrimination.

The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting.

Prior to the vote, the exclusive bargaining agent shall make reasonable efforts to notify all employees in the unit of the time and place of the meeting at which the ratification vote is to be held, or any other method which will be used to conduct the ratification vote. The amount of such service fee shall be equal to the amount required to become a member and remain a member in good standing of the exclusive bargaining agent and its affiliates to or from which membership dues or per capita fees are paid or received. No employee organization shall receive a service fee as provided herein unless it has established a procedure by which any employee so demanding may obtain a rebate of that part of said employee's service payment, if any, that represents a pro rata share of expenditures by the organization or its affiliates for:

(1) contributions to political candidates or political committees formed for a candidate or political party;

(2) publicizing of an organizational preference for a candidate for political office;

(3) efforts to enact, defeat, repeal or amend legislation unrelated to the wages, hours, standards of productivity and performance, and other terms and conditions of employment, and the welfare or the working environment of employees represented by the exclusive bargaining agent or its affiliates;

(4) contributions to charitable, religious or idealogical causes not germane to its duties as the exclusive bargaining agent;

(5) benefits which are not germane to the governance or duties as bargaining agent, of the exclusive bargaining agent or its affiliates and available only to the members of the employee organization.

It shall be a prohibited labor practice for an employee organization or its affiliates to discriminate against an employee on the basis of the employee's membership, nonmembership or agency fee status in the employee organization or its affiliates.

Section 13. List of employee organizations; required information; filing; compliance, enforcement.

The commission shall maintain a list of employee organizations. To be recognized as such and to be included in the list an organization shall file with the commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. Every employee organization shall notify the commission promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The commission shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of such list shall be made available to interested parties upon request.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the superior court for the county wherein such violation has occurred in the same manner as other orders of the commission under this chapter.

Section 14. Information statement and financial report required of employee organizations; filing; enforcement.

No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers.

Every employee organization shall keep an adequate record of its financial transactions and shall make annually available to its members and to non-member employees who are required to pay a service fee under section twelve of this act, within sixty days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and operating statement. Such report shall indicate the total of its receipts of any kind and the sources of such receipts, and disbursements made by it during its last fiscal year. A copy of such report shall be filed with the commission.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the superior court for the county wherein such violation has occurred in the same manner as other orders of the commission under this chapter.

Section 15. Penalties.

Whoever willfully assaults, physically resists, prevents, impedes, or interferes with a mediator, fact-finder, or arbitrator, or any member of the commission or any of the agents or employees of the commission in the performance of duties pursuant to this chapter shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Whoever knowingly files a statement or report under section fourteen of this chapter, which report is false in any material representation, shall be punished by a fine of not more than five thousand dollars.

No compensation shall be paid by an employer to an employee with respect to any day or part thereof when such employee is engaged in a strike against said employer. No such employee shall be eligible for such compensation at a later date in the event that such employee is required to work additional days to fulfill the provisions of a collective bargaining agreement, except in the instance when a regional or local school district does not receive authorization for a shortened school year from the department of education, in which case such employee shall be eligible for compensation at his regular rate for such additional days worked.

Any employee who engages in a strike shall be subject to discipline and discharge proceedings by the employer.

CHAPTER 1078, SECTION 4A OF THE ACTS OF 1973, AS AMENDED[2]
AN ACT RELATIVE TO COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES

Section 4A. (1)(a)(i) There shall be in the executive office of labor, but not subject to the jurisdiction thereof, a committee to be known as the joint labor-management committee, in this section referred to as the committee. The committee shall be composed of 15 members including a chairman and a vice-chairman and such alternate members as the committee shall approve. Twelve committee members shall be appointed by the governor as follows: 3 firefighters from nominations submitted by the Professional Firefighters of Massachusetts, International Association of Firefighters, AFL-CIO; 3 police officers from nominations submitted by the International Brotherhood of Police Officers, NAGE, SEIU, AFL-CIO, the Boston Patrolmen's Association IUPA, AFL-CIO, the Massachusetts Coalition of Police, IUPA, AFL-CIO; and the Massachusetts Police Association and 6 from nominations submitted by the Advisory Committee on Local Government established under section 62 of chapter 3 of the General Laws. Said twelve members shall be appointed for a term of three years; provided however that in making his initial appointments, the governor shall appoint one member nominated by said professional firefighters organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; one member nominated by said professional police organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; and two members nominated by said advisory commission for a term of one year; two such members for a term of two years, and two such members for a term of three years. Any member of the committee may be removed by the governor for neglect of duty, malfeasance in office, or upon request by the nominating body.

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[2] Chapter 1078, Section 4 of the Acts of 1973 created a dispute resolution procedure for municipal police officers and fire fighters, and provided that the procedure would expire on June 30, 1977; Chapter 347 of the Acts of 1977 rewrote Section 4 and extended its provisions through June 30, 1979; Chapter 730 of the Acts of 1977 added Section 4A, creating the Joint Labor-Management Committee; Chapter 154 of the Acts of 1979 rewrote Section 4A and extended the provisions of Section 4 through June 30, 1983; Chapter 580, Section 10 of the Acts of 1980 repealed Section 4; Chapter 351, Section 239 of the Acts of 1981 amended Section 4A; Chapter 594 of the Acts of 1979 inserted a Section 4B, adding a dispute resolution procedure for certain members of the State Police and Metropolitan District Commission and providing that the procedure would expire on June 30, 1983; Chapter 726 of the Acts of 1985 rewrote Section 4B to apply only to certain members of the State Police and inserted a Section 4C, applying to certain members of the Metropolitan District Commission, and extended the provisions of Sections 4B and 4C through June 30, 1988; Chapter 589 of the Acts of 1987 rewrote Section 4A, creating a new dispute resolution procedure for municipal police officers and fire fighters; Chapter 333 of the Acts of 1988 extended the provisions of Sections 4B and 4C through June 30, 1991 (however, there were no further extensions); and Chapter 300, Section 14 of the Acts of 2002 amended Section 4A.

(ii) The chairman and vice-chairman shall be nominated by the committee, and appointed by the governor for a term of three years. The chairman shall be the chief administrative officer of the committee. The vice-chairman shall assist the chairman and may be authorized by the chairman to act for him in his absence and shall have the full powers of the chairman when so authorized and he shall vote only in the absence of the chairman.

(iii) Alternate members may serve for such term and under such conditions, as the committee shall determine. Said professional police organizations, professional fire organizations, and said advisory commission shall specify alternate members to represent their respective members, subject to the approval of the full committee.

(b) In matters exclusively pertaining to municipal firefighters, committee members nominated for appointment by professional police officer organizations shall not vote. In matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional firefighter organizations shall not vote. All committee members shall be eligible to vote on matters of common and general interest. The number of committee members representing the local government advisory committee and the number of committee members representing the professional firefighter or police organizations entitled to vote on any matter coming before the committee shall be equal. The chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to take jurisdiction over a dispute.

(c) Members and alternate members of the committee shall serve without compensation, but shall be entitled to reimbursement, out of any funds available for the purpose, for reasonable travel or other expenses actually incurred in the performance of their committee duties. The chairman and vice-chairman shall be compensated for time spent for the committee business on a per diem basis at a rate to be determined by the secretary of administration and finance. The committee may purchase supplies and equipment, and may employ clerical staff and other personnel who shall not be subject to the provisions of section nine A of chapter thirty or chapter thirty-one of the General Laws, as they deem necessary to the conduct of committee business out of any funds available for the purpose. Members and alternate members of the committee employed by a municipality shall be granted leave, if on duty, by the municipal employer for those regularly scheduled work hours spent in the performance of committee business.

(2)(a) The committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters. The committee shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal firefighters or police officers; provided, however, that the committee may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section.

(b) After notification by the committee, the parties to any municipal police and fire negotiations shall file with the committee, in such time as the committee orders:

(1) copies of all requests to bargain and of all bargaining agenda;

(2) notification of the apparent exhaustion of the processes of collective bargaining;

(3) notification of all pending unfair labor practice proceedings between the parties;

(4) copies of any fact-finding reports;

(5) notification of any impasse extending beyond completion of fact-finding procedures;

(6) copies of any collective bargaining agreements, and any relevant personnel ordinances, by-laws, and rules and regulations; and

(7) such other information as the committee may reasonably require.

(c) Notwithstanding the provisions of the first paragraph of section nine of chapter one-hundred and fifty E of the General Laws to the contrary, when either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe that the process of collective bargaining has been exhausted the party or both parties shall petition first the committee for the exercise of jurisdiction and for the determination of the apparent exhaustion of the process of collective bargaining.

The committee shall forthwith review the petition and shall make a determination within thirty days whether to exercise jurisdiction over the dispute. Subject to the second paragraph of clause (d) of this subdivision, if the committee declines to exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board of arbitration and conciliation hereinafter referred to as the board, for disposition in accordance with the provisions of section nine of chapter one hundred and fifty E of the General Laws.

The petition to the committee shall identify the issues in dispute, the parties, the efforts of the parties to resolve the dispute and such other information as may be prescribed in the rules of the committee.

Said board shall not accept any petition from a party to a municipal police and fire negotiation under section nine of chapter one hundred and fifty E of the General Laws if the petition has not been first reviewed in accordance with the provisions of this section by the committee.

(d) The committee or its representatives or mediators appointed by it may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement through negotiation or mediation, and may, upon a vote of the committee, initiate fact-finding proceedings.

The committee after consultation with the board of arbitration and conciliation may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The committee may, at any time, remand to the board any dispute over which the committee has exercised jurisdiction. The board shall assist and cooperate with the committee in its

performance of the committee's duties. Disputes over which the committee does not exercise jurisdiction shall be governed by all other applicable provisions of law.

(3)(a) The committee shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the committee makes such a determination it is authorized to hold a hearing to identify:

(1) the issues that remain in dispute;

(2) the current positions of the parties;

(3) the views of the parties as to how the continuing dispute should be resolved; and

(4) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

If the committee, after a full hearing, finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings.

Within ten days of such notification, the committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the collective bargaining negotiations. Such procedures and mechanisms may include, but need not be limited to:

(1) any form of arbitration, including, but not limited to, conventional arbitration, issue by issue or last best offer;

(2) arbitration for all or any issue in dispute; provided, however, that the committee may direct the parties to conduct further negotiations concerning issues not specified for arbitration;

(3) single arbitrators, including the chairman, vice-chairman or an outside neutral arbitrator;

(4) an arbitration board, which may include labor and public management representatives as voting or non-voting members;

(5) separate stages or procedures for the executive and legislative bodies of a municipality.

The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

(1) such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws;

(2) the financial ability of the municipality to meet costs. The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or

district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town, or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town, or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town;

(3) the interests and welfare of the public;

(4) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;

(5) a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;

(6) the decisions and recommendations of the factfinder, if any;

(7) the average consumer prices for goods and services, commonly known as the cost of living;

(8) the overall compensation presently received by the employees, including direct wages and fringe benefits;

(9) changes in any of the foregoing circumstances during the pendency of the dispute;

(10) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment;

(11) the stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the committee in the superior court in equity; provided, however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of

arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officers and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting. The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining. The committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

The commencement of a new municipal finance year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall be subject to the provisions of this clause.

When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the committee of jurisdiction by presenting a written agreement of their procedures to the committee; provided, however, that the committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further that if the committee subsequently finds that either of the parties fails to abide by said procedures, the committee shall assume jurisdiction of the dispute. (Section 3 of chapter five hundred and eight-nine of the acts of 1987 provides that clause (a) of subdivision (3) of section four A shall cease to be operative on April first, nineteen hundred and ninety, and any arbitration proceeding pending on April first, nineteen hundred and ninety shall be completed under the provisions of said clause (a).)

(b) In any dispute resolution conducted by other than the committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution; provided, however, that pursuant to a vote of the committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the committee.

(c) The committee shall have jurisdiction in any particular dispute concerning job titles over which the parties have negotiated or to remove specific job titles from collective bargaining for individuals performing certain specific management duties.

(4) The committee shall promulgate rules and regulations necessary for the performance and enforcement of the responsibilities and powers set forth in this act; provided, however, that said committee file a copy of any regulations or amendments thereto with the clerks of the senate and the house of representatives who, with the approval of the president of the senate and speaker of the house of representatives, shall refer such regulations to an appropriate committee of the general court. Within thirty days after such filing, the appropriate committee of the general court shall hold a hearing on such regulations and shall issue a report and file a copy with the joint labor-management committee. Said joint labor-management committee shall consider such report and make revisions in the regulations as it deems appropriate in view of such report and shall forthwith file a copy of the final regulations with the chairman of the committee of the general court to which the regulations were referred.

On or before the first Wednesday of each year in which the provisions of clause (a) of subdivision (3) of this section are in effect, the committee shall file with the clerks of the senate and the house of representatives, and with the chairmen of the special commission on dispute resolution established under chapter two of the resolves of nineteen hundred and eighty-four, a report assessing the efficacy of the provisions of said clause in decreasing the length and severity of municipal public safety bargaining disputes, and the other impacts, if any, of said provisions of the collective bargaining process. Such report shall include a full listing of any matters in which the provisions of said clause were invoked during the previous twelve months, and the final disposition of any such matters, together with the committee's recommendations, if any, for the modification or extension of said provisions.

The provisions of chapter thirty A of the General Laws, unless otherwise provided, shall apply to the committee.

The committee shall have the power to administer oaths to require by subpoena the attendance and testimony of witnesses, production of books, records, and other evidence relative to or pertinent to the issues presented to the committee.

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M.G.L. c. 23C. BOARD OF CONCILIATION AND ARBITRATION

Section 1. Declaration of policy.

It is hereby declared to be the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; and it shall be the responsibility and objective of the board of conciliation and arbitration to take such steps as will most effectively and expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement or to agree on the method and procedure which shall be used to resolve a dispute.

It is recognized that a constructive and harmonious long-term collective bargaining relationship is the most positive way to avoid labor disputes, and such a relationship can be effectively developed in the public sector through the use of joint labor management committees.

Section 2. Board of conciliation and arbitration; appointment of chairman.

There shall be in the department of labor and workforce development, but not subject to the jurisdiction thereof, a department called the board of conciliation and arbitration.

The board of conciliation and arbitration shall be under the supervision and control of the chairman of said board who shall be appointed by the governor for a term of five years, and subsequent successors shall be appointed in like manner. Prior to appointing the chairman, the governor shall request the recommendations of the unions and employers who commonly are involved in matters under the jurisdiction of the board. Said chairman shall devote his whole time during business hours to the work of the board and shall not engage in any profession, practice, or business during said hours. The chairman may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

Section 3. Powers of chairman; joint labor management committees; interchange of members.

Notwithstanding the provisions of any general or special law to the contrary, the chairman of the board of conciliation and arbitration shall, subject to appropriation, appoint and have power to remove, a vice chairman and such mediators, investigators, arbitrators, and other employees and individuals as are necessary for the operation of the board, and may utilize such voluntary and uncompensated services, as may from time to time be needed and said chairman shall assign duties and responsibilities to such individuals. In the absence of the chairman, the vice chairman shall have the duties and responsibilities of the chairman. The employees of the board and the employees of the joint labor management committee, established under the provisions of section four A of chapter one thousand and seventy-eight of the acts of nineteen hundred and seventy-three, and the employees of any other joint labor management committee established under the provisions of any other general or special law, may be interchanged for the purposes of

resolving a particular labor dispute in the most efficient and expeditious manner, and assigned various duties and responsibilities at the discretion of said chairman after consultation with the chairman of the joint labor management committee which is involved in the interchange.

Section 4. Membership of conciliation and arbitration board; appointment by chairman; consultation.

The chairman and two other members shall constitute the board of conciliation and arbitration. The chairman shall be the neutral member of said board. One of the other members shall be a representative of labor, and one a representative of the employers of labor. The representatives of labor and the representatives of the employers shall be appointed by the chairman to serve on a case-by-case basis for grievance arbitrations. Prior to the appointment of said representatives, the chairman shall consult with the union and employer involved in the case and request their recommendation as to whether each wants a representative to sit on the case and if so, the representative who they recommend represent their interests on the board.

Notwithstanding any general or special law to the contrary, the chairman of the board may designate the neutral member of the board, the chairman, to act with full power of the board in the following situations: (1) as a single arbitrator in grievance arbitration of a public or private sector dispute arising under a collective bargaining agreement, (2) as a single neutral arbitrator, on any other type of grievance, dispute, or matter which the board would be required or have the authority to arbitrate under the terms of any general or special law, or provision in a collective bargaining agreement, (3) as a single member of the board on any matter not mentioned in (1) or (2) above which the board would be required or have the authority to hear, act on, or decide under the terms of any general or special law, or provision in a collective bargaining agreement. Notwithstanding any general or special law to the contrary, in the arbitration of a grievance arising under a public or private collective bargaining agreement, the chairman of the board may appoint a nonmember to act as a temporary neutral member of the board, or to act as the single neutral arbitrator with the full power of the board.

M.G.L. c. 23. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Section 9O. Labor relations commission; creation; members; appointment and removal; terms of office; vacancies; quorum; seal; reports.

(a) There shall be in the department of labor and workforce development, but in no respect subject to the jurisdiction thereof, a commission to be known as the Labor Relations Commission, in this and the three following sections referred to as the commission, which shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the executive council. Upon the expiration of the term of any member, his successor shall be appointed in like manner for a term of five years. Any vacancy in the commission shall be filled by appointment in like manner. The governor shall designate one member to serve as chairman of the commission. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and two members of the commission shall at all times constitute a quorum. The commission shall have an official seal which shall be judicially noticed.

(c) The commission shall at the close of each fiscal year make a report in writing to the general court stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed.

Section 9P. Salaries; eligibility to reappointment; personnel; agencies, etc.

The positions of the chairman and other members shall be classified in accordance with section forty-five of chapter thirty and the salaries shall be determined in accordance with section forty-six C of said chapter thirty and each shall devote full time during business hours to the duties of his office and shall be eligible for reappointment. Members shall devote their whole time to the work of the commission and shall not engage in any profession, practice or business. The commission shall appoint an executive secretary, and such attorneys, examiners and regional directors and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by the general court. The commission may establish or utilize such regional, local or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the commission, appear for and represent the commission in any case in court. Nothing in this chapter shall be construed to authorize the commission to appoint individuals for the purpose of conciliation or mediation or for statistical work, where such service may be obtained from the department of labor and industries.

Section 9Q. Principal office; inquiries.

The principal office of the commission shall be in the city of Boston, but it may meet and exercise any or all of its powers at any other place. The commission may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the commonwealth. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the commission in the same case.

Section 9R. Rules and regulations.

The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of sections nine O to nine Q, inclusive, of this chapter, chapter one hundred and fifty A, and chapter one hundred and fifty E. Such rules and regulations shall be effective upon publication in the manner in which the commission shall prescribe.

CHAPTER 151, SECTION 577 OF THE ACTS OF 1996

Section 577. (a) Notwithstanding any general or special law to the contrary, commencing July first, nineteen hundred and ninety-six, the parties to any proceeding conducted pursuant to section eleven of chapter one hundred and fifty E of the General Laws, shall be afforded the opportunity to forego the hearings before the labor relations commission referenced therein and choose to have the matter heard by an impartial and qualified arbitrator selected, at the parties' option, pursuant to the procedures established by the board of conciliation and arbitration as provided by chapter one hundred and fifty of the General Laws or through procedures established by the American Arbitration Association. Submission of the matter to arbitration, in lieu of proceedings before the commission, shall occur only with the voluntary, written and notarized consent of all the parties to the proceeding; provided, however, that once such written and notarized consent is submitted to the commission by all parties to the proceeding, the parties shall be obligated to comply with all procedural requirements necessary to bring the matter to arbitration and shall be bound by the decision of the arbitrator to the same extent as a decision of the commission, subject only to the provisions for judicial review by the appeals court as provided in the last paragraph of said section eleven. Failure of a party, who has consented to arbitration, to comply with the procedural requirements necessary to bring the matter to resolution by an arbitrator shall be grounds for entry of a default judgement by the commission and the commission is hereby authorized and directed to establish procedures for determining whether such default judgement is warranted.

(b) The costs of such arbitration shall be borne by the parties to the proceedings in conformity with the rules and regulations established by the board of conciliation arid arbitration or the American Arbitration Association, whichever is applicable. At the time that the commission notifies the parties that it has made a determination that there is probable cause to believe that a practice prohibited by section ten of said chapter one hundred and fifty E has been committed, the commission shall also inform all parties, in writing, of the availability of the arbitration alternatives, shall provide them with a copy of the applicable rules and regulations of the board of conciliation and arbitration and the American Arbitration Association, shall inform the parties that the costs of the arbitration alternative shall be borne by the parties and not the commission, and shall inform the parties that the election to submit the dispute to arbitration, in lieu of a hearing before the commission, can be made at any time up to thirty days prior to commencement of the hearing authorized in the first paragraph of said section eleven.

(c) An arbitrator, selected pursuant to this section, shall have the same authority and responsibilities with respect to such proceedings as the commission has in proceedings conducted under said section eleven. The decision of an arbitrator, pursuant to this section, shall be subject to judicial review as provided in the last paragraph of said section eleven. The arbitrator's decision shall be reviewed by the same standards set forth in said section eleven and shall be subject to the same deference that is afforded decisions of the commission, provided, however, that in the event of a conflict between a decision of an arbitrator and a prior decision of the labor relations commission, the decision of the commission shall be afforded greater deference. The party who initiated the proceedings before the commission pursuant to said section eleven shall file with the commission a

copy of the award of the arbitrator, notice of institution of proceedings for judicial review pursuant to said section eleven, and a copy of any decision of the court with respect to the arbitrator's award within ten days of the issuance or filing of such award, appeal or judicial decision.

(d) No later than March thirtieth, nineteen hundred and ninety-seven, the commission shall submit a report to the house and senate committees on ways and means documenting the number of cases in which the parties have elected the arbitration option, the number. of such cases in which an arbitrator's award has issued, the number of such cases in which judicial review of the arbitrator's award has been sought and the number of cases in which the decision of the arbitrator has been affirmed or reversed by the court.

PART III: RULES & REGULATIONS

[1] Although M.G.L. c.150A primarily covers private employers, certain public authorities, including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority are covered by M.G.L. c.150A. *See*, M.G.L. c.161A; Chapter 760 of the Acts of 1962.

This Part last Updated: 11/02

A. LABOR RELATIONS COMMISSION

2.00: ADMINISTRATION OF THE LABOR RELATIONS LAW: M.G.L. c. 150A

2.01: Definitions

Days shall mean calendar days, including Saturdays, Sundays and legal holidays.

Hearing Officers shall mean the Commission member or agent designated to preside at a hearing.

Law. The term "Law" as used herein shall mean the State Labor Relations Law (M.G.L. c. 150A).

The terms "person", "employer", "employee, representatives," "labor organizations," "unfair labor practice," and "Commission" as used herein, shall have the meanings set forth in M.G.L. c.150A, s. 2, as amended.

Party as used herein in connection with the proceedings under M.G.L. c. 150A, s. 6, shall mean the respondent to the charge, the charging party and any other persons, labor organizations, or entities whose intervention in the proceedings has been permitted by the Commission. The term "party" as used herein in connection with proceedings under M.G.L. c. 150A, s. 5, shall mean the employer, or employers, the person or organization designated in the notice of hearing and served therewith, the petitioner and any other person, labor organization, or entity whose intervention has been permitted by the Commission, except as limited by the Commission in granting such permission.

Showing of Interest shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of authorization cards or petitions, signed and dated by employees, authorizing the named employee organization to represent such employees for the purpose of collective bargaining; current dues deductions; or evidence approved by the Commission.

2.02: General Provisions

The provisions of 456 CMR 12.00 are applicable to all proceedings under 456 CMR 2.00.

2.03: Conduct of Hearings

The provisions of 456 CMR 13.00 are applicable to all proceedings under this chapter, except that any party seeking review of a decision of a hearing officer may file an original and four copies of a supplementary statement pursuant to 456 CMR 13.15(4).

2.04: Questions of Representation

The provisions of 456 CMR 14.00, except 456 CMR 14.06(1), and 456 CMR 14.07, are applicable to all proceedings under M.G.L. c. 150A, s.s. 5 and 5A except that all references to M.G.L. c. 150E, s. 4 in 456 CMR 14.00 shall be considered references to M.G.L. c. 150A, s.s. 5 or 5A. Moreover, except for good cause shown, no petition filed under the provisions of M.G.L. c. 150A, s.s. 5 or 5A, and no petition filed pursuant to 456 CMR 14.15 seeking to alter the composition or scope of a unit during the term of an existing valid collective bargaining agreement, shall be entertained unless such petition is filed no more than 90 days and no fewer than 60 days prior to the termination date of said agreement. A petition to alter the composition or scope of an existing unit by adding or deleting job classifications which have been created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times. No collective bargaining agreement shall operate as a bar for a period of more than three years.

2.05: Prohibited Practices

The provisions of 456 CMR 15.00 (except 15.03), 456 CMR 16.06 and 456 CMR 16.08 are applicable to all proceedings under M.G.L. c. 150A, s. 6 except that all references to M.G.L. c. 150E, s. 10 shall be considered references to M.G.L. c. 150A, s.s. 4, 4A, 4B, and 4C, and all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.06: Time Limit for Filing Charges

(1) Fifteen day limit - M.G.L. c. 150A, s. 6A charges. Any employee required to maintain union membership as a condition of employment who files a charge pursuant to M.G.L. c. 150A, s. 6A, must file such charge not more than 15 days after notice that the union has requested the employee's discharge or other adverse action for failure to maintain union membership.

(2) Six month limit - all other charges. Except for good cause shown, no charge alleging a violation of other provisions of M.G.L. c. 150A shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of the charges with the Commission.

2.07: Designation of Agents of the Commission

The provisions of 456 CMR 18.00 are applicable to all proceedings under this chapter, except that all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.08: Construction of Rules and Amendments

456 CMR 2.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150A.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R;

10.00:ADMINISTRATION OF M.G.L. C. 150E, AN ACT PROVIDING FOR COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

10.01: Applicability of Rules

10.01: Applicability of Rules

All proceedings before the Labor Relations Commission arising under M.G.L. c. 150E shall be conducted in accordance with 456 CMR 10.00 through 20.00.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

11.00: DEFINITIONS

11.01: Law

The term "Law" as used in 456 CMR 11.00, 12.00, 13.00, 14.00, 15.00, 16.00 or 17.00 shall mean M.G.L. c. 150E.

11.02: Terms defined by Law

The terms "board", "commission", "cost items", "employee" or "public employee", "employee organization", "employer", "incremental cost items" "legislative body", "professional employee" and "strike" as used herein shall have the meaning as set forth in M.G.L. c. 150E, s. 1. The term "appropriate bargaining unit" shall mean a bargaining unit determined by the criteria set forth in M.G.L. c. 150E, s. 3 or otherwise established by law. The term "prohibited practice" as used herein shall have the meaning specified in M.G.L. c. 150E, s. 10.

11.03: Party

The term "party" as used herein shall mean any individual, employer or employee organization participating in a matter before the Commission either as a matter of right or as an intervenor under the provisions of 456 CMR 12.03.

11.04: Recognition

The term "recognition" shall mean written recognition by an employer pursuant to 456 CMR 14.06(3) of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

11.05: Showing of Interest

The term "showing of interest" shall mean the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive

representative or have signed a petition seeking decertification of an incumbent employee organization. Such designations shall consist of:

(1) authorization cards or petitions, authorizing the named employee organization to represent such employees for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.03.

(2) authorization cards or petitions, stating that such employees no longer wish to be represented by the named employee organization for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six-months of the filing of a petition pursuant to 456 CMR 14.04; or

(3) other evidence approved by the Commission.

11.06: Days

The term "days" shall mean calendar days, including Saturdays, Sundays and legal holidays.

11.07: Hearing Officer

The term "hearing officer" shall mean the Commission member or agent designated to preside at a hearing.

11.08: Complaint, Charge

The term "complaint" as used in the first sentence only of M.G.L. c. 150E, s. 11 shall hereinafter be referred to as a "charge".

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

12.00:GENERAL PROVISIONS

12.01:Scope of Chapter

The provisions of 456 CMR 12.00 are applicable to all proceedings before the Commission.

12.02:Service: When required

Except as otherwise provided in 456 CMR, all petitions and charges, every pleading subsequent to the original petition or charge, every written motion, every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, request for reconsideration, notice of appeal, supplementary statement and similar paper filed with the Commission shall be signed by the party or a representative of the party on whose behalf such paper is filed and shall be served upon each of the parties or their legal representative, if any. A certificate of service or other indication of service shall accompany such filing. Service upon each of the parties, or their legal representative, if any, shall be made at the same time as such document is filed with the Commission.

12.03:Intervention

Any employer, employee or employee organization desiring to intervene in any proceeding shall file with the Commission a motion in writing, or may move orally at the hearing, on the record, stating the grounds upon which such employee, employer or employee organization claims to be interested. Such written motion must be filed at or prior to the first day of hearing in any proceeding, except for good cause shown. The Commission shall rule upon all such motions but may defer ruling until the conclusion of the hearing. The Commission may permit intervention to such extent and upon such terms as it shall deem just.

12.04:Appearances

(1) Every representative or attorney representing a party shall enter an appearance with the Commission. Every party shall designate one representative or attorney for the purpose of receiving notice, pleadings or service of process.

(2) An appearance may be withdrawn only with the permission of the Commission. A request to the Commission to withdraw an appearance shall be made in writing, served upon both the party on whose behalf the representative or attorney has appeared and upon representatives of all other parties to the proceeding.

(3) The filing of an appearance shall not operate as a waiver to any challenge to the Commission's jurisdiction.

12.05:Right to Counsel

Any party to a proceeding shall have the right to appear at any conference, investigation or hearing, by counsel or by other representative.

12.06:Postponements

Requests for postponements of hearings, investigations or conferences scheduled by the Commission will not be granted unless good and sufficient cause is shown and the following requirements are met:

(1) The request must be in writing directed to the Executive Secretary, who may refer the request to the hearing officer assigned to the proceeding.

(2) The grounds for the request must be set forth in detail.

(3) The requesting party must specify alternate dates for rescheduling the hearing or conference.

(4) The position of all parties concerning both the postponement request and the proposed alternate dates must be ascertained in advance by the requesting party and set forth in the request.

(5) Copies of the request must be served contemporaneously on all parties and that fact must be noted on the request.

(6) The request must be signed by the person making it.

(7) For the purpose of 456 CMR 12.06, "good and sufficient cause" may include a showing to the satisfaction of the Commission or its agents that a postponement will result in settlement of the case.

(8) Except for good cause shown, no request for postponement will be granted on any of the three days immediately preceding the date of hearing, investigation or conference.

12.07:Time: How computed

(1) In computing any period of time prescribed or allowed by 456 CMR 12.00, the day of the act, event or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.

(2) Whenever a party has the right or is required to do some act within a prescribed period of time, if the Commission serves notice of such right or requirement by mail, the Commission shall presume that the party received notice thereof three days from the date of issuance of such notice. The presumption may be rebutted by evidence of later receipt.

12.08:Contemptuous Conduct

(1) Contemptuous conduct by any person at any hearing, conference or other proceeding before the Commission, a member or duly designated agent shall be grounds for exclusion from any hearing, conference or other proceeding held under 456 CMR 12.00. The refusal of a witness at a hearing to answer any question which has been ruled by the Commission, member or duly designated agent to be proper shall, in the discretion of the Commission, member or duly designated agent, be grounds for striking all testimony previously given by such witness on related matters.

(2) Contemptuous conduct by an attorney or representative appearing before the Commission or its designated agent may be grounds for immediate exclusion from the hearing, conference or other proceeding at which he or she is appearing, or may be grounds for suspension or debarment from practice before the Commission. Suspension or debarment determination, and the length thereof, shall be made by the Commission after due notice and a hearing, if requested in writing.

12.09:Other Conferences

Nothing under 456 CMR 12.00 shall be construed so as to prohibit or limit the Commission or any member or agent thereof from holding a conference or investigation at any time in connection with any matter pending before the Commission.

12.10:Settlement of Cases

The Commission or its agents may suggest settlement ideas to the parties at any time and may require the parties to participate in settlement conferences.

12.11:Filing with the Commission

(1) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Commission shall be on paper measuring 8 1/2 inches in width and 11 inches in length.

(2) All pleadings, written motions, briefs and memoranda shall be typewritten and double spaced.

(3) An original and two copies of all pleadings, written motions, briefs or memoranda shall be filed with the Commission.

(4) All documents, including those permitted to be filed by facsimile transmission, shall be deemed filed upon receipt by the Commission. Any documents, including those permitted

to be filed by facsimile transmission, received after 5:00 P.M. shall be deemed to be filed on the following business day.

(5) The Commission will permit the following documents to be filed by facsimile transmission:

(a) Requests for extentions of time for filing documents;

(b) Requests for continuances;

(c) Consent election agreements;

(d) Settlement agreements;

(e) Withdrawal notices.

Except for those documents listed above, the Commission will not accept any document requiring an original signature by facsimile. Those include, but are not limited to: prohibited labor practice charges, written investigation submissions, representation petitions, showings of interest, answers, requests for reconsideration, requests for review, notices of appeal, objections to elections, challenges to recommended findings of fact, requests for advisory opinions, strike investigation petitions, requests for binding arbitration, filings pursuant to M.G.L. c.150E, §§13 and 14, motions, briefs, and supplementary statements.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

13.00: CONDUCT OF HEARINGS

13.01: Scope of Chapter

The provisions of 456 CMR 13.00 are applicable to all hearings before the Commission, except hearings on petitions filed pursuant to 456 CMR 14.00. Hearings on petitions filed pursuant to 456 CMR 14.00 shall be governed by the procedures in 456 CMR 14.08.

13.02: Hearings and Recommended Findings

(1) The Commission in its discretion may designate that the allegations set forth in a complaint shall be decided by the Commission in the first instance, or by a hearing officer, and shall notify the parties of such designation or redesignation.

(2) A hearing that has been designated for a Commission decision in the first instance shall be presided over by a Commission member or by a hearing officer. The Commission shall decide the case in a written decision based on the record of the proceedings. The Commission may direct the hearing officer or Commission member who has observed the witnesses to issue written recommended findings of facts and/or recommended conclusions of law prior to the Commission's consideration of the case. Within ten days after notice thereof, or within 15 days of receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made after receipt of a hearing officer's or Commission member's recommended factual findings and/or conclusions of law, whichever is later, any party may submit to the Commission an original and four copies of a written challenge of the hearing officer's or Commission member's recommended findings of fact and/or conclusions of law. Challenges to a hearing officer's or Commission member's recommended factual findings must identify the specific recommended findings alleged to be erroneous and must clearly identify all record evidence that supports a contrary factual finding. Challenges to a hearing officer's or Commission member's recommended conclusions of law must identify the specific

recommended conclusions challenged and must explain the basis for the challenging party's challenge. Within ten days of receipt of the challenging party's challenge, any other party to the proceeding may submit an original and four copies of a written response to the challenge. The record of the proceedings will include the hearing officer's or Commission member's recommended factual findings and/or conclusions of law along with any written challenges and responses submitted to the Commission. The authority exercised by the hearing officer or Commission member shall be as set forth in 456 CMR 13.06.

(3) A hearing that has been designated for a hearing officer decision in the first instance shall be presided over by a hearing officer who shall have, in addition to the authority set forth in 456 CMR 13.06, the authority to make all rulings and orders necessary to decide the case based on the record of the proceedings. Final decisions and orders of the hearing officer shall be in writing and may be appealed to the Commission in accordance with 456 CMR 13.15.

13.03: Interlocutory Appeals

(1) Prior to the close of a hearing, a party may seek relief from a ruling or order of the hearing officer in the following manner:

(a) the motion for relief must be in writing and addressed to the Executive Secretary;

(b) the motion must set forth with specificity the ruling or order from which relief is sought and grounds on which the party believes that it is entitled to relief, including why review following the close of the hearing is not an adequate remedy.

(2) Such a motion for review shall not operate to delay or interrupt the hearing. The ruling of the hearing officer shall remain in effect until and unless modified or overruled by the Commission. The Commission may, at its discretion, defer any ruling on such motion until the close of the hearing.

13.04: Right to Counsel and to Offer Evidence

Any party to a proceeding shall have the right to appear at such proceeding in person, by counsel or by other representative, to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.

13.05: Open to Public

Any hearing conducted pursuant to this chapter shall be open to the public except in extraordinary situations or circumstances as the Commission, in its discretion, may determine.

13.06: Authority of Commission Agent Presiding at Hearing

The Commission, member or hearing officer presiding at a hearing shall have the right to inquire fully into the facts relevant to the subject matter of the hearing and shall not be

bound by the rules of evidence observed by courts. The Commission, member or hearing officer shall have the authority:

(1) to administer oaths and affirmations;

(2) to issue subpoenas;

(3) to rule upon motions to revoke or modify subpoenas;

(4) to rule upon offers of proof and receive relevant evidence;

(5) to permit depositions to be taken when appropriate;

(6) to limit the examination and cross-examination of each witness to one representative for each party;

(7) to hold conferences for the settlement or clarification of the issues;

(8) to dispose of procedural requests or similar matters;

(9) to require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing whenever possible and to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(10) to request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof or to request the parties to submit proposed findings of fact, conclusions of law and/or requests for remedial relief;

(11) to continue the hearing from day to day or to adjourn the hearing to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(12) to rule on the admissibility of evidence; and

(13) to take any other action authorized by 456 CMR 13.00.

13.07: Motions

All motions made prior to or subsequent to the hearing shall be filed in writing with the Commission in accordance with the provisions of 456 CMR 12.11 and shall state the order or relief applied for and the grounds for the motion. Within seven days of service of the motion, any other party to the proceeding may file a response with the Commission, unless directed otherwise by the Commission or its agent. The Commission or hearing officer may defer ruling on any motions until the close of the hearing and may direct the parties to proceed with the hearing while the motion is pending. All motions made at the hearing shall be stated orally, unless otherwise directed by the Commission or the hearing officer, and shall be included in the record of the hearing.

13.08: Objections

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a short statement of the

grounds of such objection, and shall be included in the record of the hearing. No such objection shall be deemed waived by further participation in the proceedings.

13.09: Witnesses

Witnesses shall be examined orally under oath or affirmation, except if they reside outside of the State or because of illness or other cause are unable to testify before the Commission. In such situations, the Commission or its agent may direct that the testimony be taken within or without this State in such manner and in such form as is permitted by law.

13.10: Stipulations of Fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue.

13.11: Record of Hearing

(1) Except for good cause shown, all hearings conducted pursuant to 456 CMR 13.00 shall be recorded by one of the following methods: audio tape, stenographic transcription, handwritten transcription, or other equivalent method approved by the Commission.

(2) Copies of any official audio tape, stenographic transcription, handwritten transcription or other equivalent record prepared by the Commission or its agents shall be made available to all parties for purchase and may be made available for the parties to review at the Commission's offices.

(3) Any party desiring a copy of the above-referenced record of the hearing before the Commission may submit a written request for same to the Executive Secretary of the Commission.

(4) Any party may request permission of the hearing officer, or if one has not yet been designated, of the Commission, to record the hearing by means of audio tape or stenographic transcription, or through other means that will not disrupt the proceedings. Any party may request the Commission to designate a written transcript of the proceeding as the official record of the proceeding subject to the following requirements:

(a) A copy of the written transcript has been made available to all other parties to the proceeding and all have had the opportunity to specify any objections to the accuracy of the transcript to the Commission;

(b) A copy of the written transcript will be made available for purchase to all other parties for a reasonable fee reflective of the cost of the transcript;

(c) A copy of the written transcript is provided without charge to the Commission with the understanding that the Commission will make the transcript available to the public pursuant to the provisions of state law.
The Commission may refer such a request to the hearing officer for resolution.

13.12: Subpoenas

(1) Any party to a proceeding under this chapter may request the issuance of a subpoena to compel the attendance of witnesses or the production of books, records, documents or correspondence.

(2) The party requesting a subpoena shall submit a written request to the hearing officer assigned to the proceeding or, if no hearing officer has been assigned, to the Executive Secretary. The request shall be submitted on a form authorized by the Commission and shall include:

(a) the Commission case number and caption of the proceeding;

(b) the name, address and telephone number of the party requesting the subpoena;

(c) the date, time and location of the proceeding;

(d) the name and address of the witness whose testimony is sought; and,

(e) a specific description of the books, records, correspondence or documents sought.

(3) The hearing officer, the Executive Secretary, or a Commission member shall be authorized to grant or deny requests for subpoenas and shall be authorized to affix the seal of the Commission. A request for issuance of a subpoena shall be denied only if such request fails to comply with 456 CMR 13.12(2) or if the request is overbroad, oppressive or otherwise legally defective.

(4) The party requesting the subpoena shall be responsible for service of the subpoena and shall assume all costs of service, witness fees and mileage. Subpoenas shall be served in person by a disinterested person or by certified or registered mail. Witnesses shall be paid the same fees for attendance and travel as in civil cases in the courts of the Commonwealth and such fees shall be paid at the time of service.

(5)(a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the hearing officer, or, if no hearing officer has been designated, to the Executive Secretary. The motion shall include a statement of the grounds for revocation or modification of the subpoena.

(b) Upon receipt of a motion for revocation or modification of a subpoena, the hearing officer or the Commission shall rule upon the motion. Prior to such ruling, an investigation, pursuant to the provisions of M.G.L. c. 30A, s. 12(4) as amended, shall be conducted.

The Commission may defer ruling on the motion pending designation of a hearing officer.

(6) In the event of failure of a witness to comply with a subpoena, the Commission may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Commission declines both to quash the subpoena and to initiate proceedings in court nothing in these regulations will prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court pursuant to M.G.L. c. 30A, s. 12(5).

13.13: Oral Argument or Briefs

(1) The parties shall be entitled to oral arguments at the close of the hearing or may be given permission by the hearing officer or the Commission to file briefs or written statements. The time for oral argument shall be fixed by the Commission or hearing officer.

(2) Any party permitted to file a brief shall submit the original and four copies within ten days after the close of the hearing, unless otherwise directed by the hearing officer or Commission.

(3) Requests for additional time in which to file a brief shall be made in writing to the hearing officer in a hearing pursuant to 456 CMR 13.02(3) and to the Executive Secretary in a hearing pursuant to 456 CMR 13.02(2), and shall be filed with same no later than three days before the date such briefs are due.

(4) No reply briefs may be filed except by permission either of the hearing officer in a hearing pursuant to 456 CMR 13.02(3) or of the Commission in a hearing pursuant to 456 CMR 13.02(2).

13.14: Reopening of Hearings

The Commission or hearing officer may reopen the hearing and receive further evidence or otherwise dispose of the matter prior to the issuance of a final decision. The Commission or hearing officer shall notify the parties of the time and place of hearings reopened under this section.

13.15: Appeal of Hearing Officer Decisions Pursuant to 456 CMR 13.02(3)

(1) The decision of the hearing officer in a hearing designated for a hearing officer's decision pursuant to 456 CMR 13.02(3) shall become final and binding on the parties unless, within ten days after notice thereof, any party requests a review by the Commission. This procedure is the exclusive method by which the parties may request review by the Commission of the decision of the hearing officer.

(2) The decision of a hearing officer shall include the findings of fact and conclusions of law upon which the hearing officer based the decision.

(3) Any party seeking review of a decision of a hearing officer must file a notice of appeal with the Executive Secretary not later than ten days after notice of the decision of the hearing officer. The notice of appeal shall be in writing and contain the case name and number, the date of the decision of the hearing officer and a statement that the party requests review by the Commission.

(4) Within ten days after notice of the hearing officer's decision, or within 15 days after receipt of a copy of the taped recording or stenographic transcription of the hearing if a timely request for same has been made pursuant to 456 CMR 13.15(7), whichever is later, any party appealing to the Commission shall file an original and four copies of a supplementary statement. Within ten days of service thereof, any other party to the

proceeding may file an original and four copies of a supplementary statement responding to matters raised by the appealing party.

(5) Supplementary statements shall state with specificity the basis of the appeal. A party claiming that the hearing officer has made erroneous findings of fact shall identify the specific findings challenged and clearly identify all record evidence supporting the party's proposed findings of fact. The findings of fact made by the hearing officer may be adopted summarily by the Commission unless specifically objected to by a timely filed supplementary statement. Only disputes as to material issues of fact need be resolved by the Commission on appeal. When a party claims that the hearing officer has made errors of law, the supplementary statement shall identify the challenged conclusions and must explain the basis upon which the party believes the conclusions to be erroneous. Failure to provide the above-described information may result in summary dismissal of the appeal.

(6) The record on review before the Commission shall consist of the hearing officer's decision, the supplementary statements of the parties, if any, such portions of the record before the hearing officer as are necessary to resolve factual disputes and such other evidence as the Commission may require.

(7) The parties may request a copy of the taped recording or stenographic transcription of the hearing following the close of the hearing. If the hearing has been recorded by audio tape, a request for a copy of the audio tape shall be made to the Executive Secretary together with payment. A request for a copy of either the audio tape or stenographic transcription filed more than ten days after notice of the hearing officer's decision will not extend the period for filing a supplementary statement. A request for a copy of the audio tape or stenographic transcription filed within ten days after notice of the hearing officer's decision shall stay the time for filing supplementary statements until 15 days after a copy of the audio tape or stenographic transcription has been made available to the party so requesting.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

14.00: QUESTIONS OF REPRESENTATION

14.01: Petitions

(1) All petitions filed under 456 CMR 14.00 shall be in the form prescribed by the Commission.

(2) All petitions filed under 456 CMR 14.00 shall be in writing and shall contain a declaration by the person signing them, under the penalties of perjury, that the contents are true and correct to the best of the signer's knowledge or belief.

14.02: Petitions by Employers

(1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by an employer alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit shall contain the following information:

(a) The correct name and address of the employer and its designated representative for purposes of collective bargaining.

(b) A full description of the bargaining unit involved, specifying the job classifications of the employees of the petitioning employer included therein or excluded therefrom, and the approximate number of employees therein.

(c) The name, address and affiliation of the exclusive representative, if any.

(d) The date of recognition or certification, if any.

(e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.02(1)(b).

(f) The names and addresses of all employee organizations known to have claimed recognition as representatives of a substantial number of employees described in 456 CMR 14.02(1)(b), giving the date of each claim.

(g) The names and addresses of other employee organizations known to the employer to have an interest in representing the employees described in 456 CMR 14.02(1)(b).

(h) Any other relevant facts which may be required in a petition form issued by the Commission.

(2) A petition filed by an employer seeking clarifcation or amendment of an existing bargaining unit shall contain the following information:

(a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.

(b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.

(c) A full description of the job classifications sought to be included or excluded by the proposed clarification.

(d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.02(2)(b) and (2)(c).

(e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.

(f) The number of employees in the present bargaining unit and the unit proposed by the clarification.

(g) A statement by petitioner setting forth reasons why petitioner seeks clarification of the unit.

(h) Any other relevant facts which may be required by the Commission.

(3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.03: Petitions by Employee Organizations

(1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by an employee organization alleging that a substantial number of employees wish to be represented by it shall contain the following information:

(a) The correct name, address and affiliation of the employee organization.

(b) The correct name and address of the employer and the name and address of its representative designated for the purpose of collective bargaining.

(c) A full description of the bargaining unit claimed to be appropriate, including job titles, and the approximate number of employees therein.

(d) The name and address of all employee organizations known to represent or known to claim to represent any of the employees in the bargaining unit claimed to be appropriate.

(e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.03(1)(c).

(f) Any other relevant facts which may be required in a petition form issued by the Commission.

(2) A petition filed by an employee organization seeking clarification or amendment of an existing bargaining unit shall contain the following information:

(a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses.

(b) A complete description of the bargaining unit and, if the bargaining unit is certified, an identification of the case number(s) in which the existing certification was issued and amended.

(c) A full description of the job classifications sought to be included or excluded by the proposed clarification.

(d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.03(2)(b) and (2)(c).

(e) The name and address if any employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee.

(f) The number of employees in the present bargaining unit and the unit proposed by the clarification.

(g) A statement by the petitioner setting forth reasons why petitioner seeks clarification of the unit.

(h) Any other relevant facts which may be required by the Commission.

(3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.04: Petitions by Employees

(1) In initiating action under M.G.L. c. 150E, s. 4, a petition filed by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees in the unit shall contain the following information:

(a) The correct name and address of the petitioner.

(b) The correct name and address of the employer and the name and address of its collective bargaining representative, if known.

(c) A full description of the bargaining unit involved, and the approximate number of employees in the unit.

(d) The name, address and affiliation of the recognized or certified representative.

(e) The date of recognition or certification.

(f) The expiration date of the current collective bargaining agreement covering the employees described in 456 CMR 14.04(1)(c), if any.

(g) A concise statement setting forth the facts which cause the petitioner to believe that the exclusive representative no longer represents a majority of the employees in the unit.

(h) Any other relevant facts which may be required in a petition form issued by the Commission.

(2) Individual employees may not filed petitions for clarification or amendment of certification.

(3) All petitions filed pursuant to this section must be served on all incumbent labor organizations or their legal counsel, if any.

14.05: Showing of Interest

(1) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees who are not currently represented for purposes of collective bargaining shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least 30% of the employees involved to act in their interest.

(2) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and not petition filed pursuant ot 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least fifty percent (50%) of the employees involved to act in their interest.

(3) No motion to intervene filed under 456 CMR 14.18 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the intervenor has been designated by at least 10% of the employees involved to act in their interest, provided that any incumbent exclusive representative who files a motion to intervene need not comply with the requirement under this section. Authorization cards or other written evidence of a "showing of interest" (as defined in 456 CMR 11.05) must be submitted by the petitioner with the petition or by the intervenor with the motion to intervene to enable the Commission to make this determination. The Commission may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list is requested by the Commission but is not made available, the showing of interest as submitted shall, if otherwise valid, be accepted as bona fide. If the Commission finds that a sufficient showing of interest has not been made, the petitioner or intervenor shall be given notice by the Commission of that finding and shall be allowed seven days after receipt of written notice of

that finding to submit a further showing of interest. This seven-day period shall not extend the times for filing a representation petition set out in 456 CMR 14.06. If sufficient showing of interest is not timely submitted by the petitioner the Commission may dismiss the petition. If sufficient show of interest is not timely submitted by an intervenor the Commission may deny the intervenor either the opportunity to participate in or to challenge a consent election agreement between other parties, and/or the opportunity to appear on an election ballot.

14.06: Bars to Petitions; Elections

(1) Contract Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4, shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three years.

(b)Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, provided that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

(2) Withdrawal/Disclaimer Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner withdrew from a prior petition within the preceding 6 months.

(b) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, s. 4 shall be entertained in any bargaining unit or subdivision thereof within which,after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner disclaimed interest in continued representation of the bargaining unit within the preceding six months.

(3) Election Year Bar. Except for good cause shown, no election shall be directed by the Commission pursuant to M.G.L. c. 150E, s. 4, in any bargaining unit or subdivision thereof within which a valid election has been held in the preceding 12 months.

(4) Certification Year Bar. Except for good.cause shown, the Commission will not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Commission has issued a certification of representative within the preceding 12 months.

(5) Recognition Year Bar. Except for good cause shown, no petition for an election will be processed by the Commission pursuant to M.G.L. c. 150E, s. 4, in any represented bargaining unit or any subdivision thereof with respect to which a recognition agreement has been executed in accordance with the provisions of this subsection in the preceding 12-month period. For the purpose of 456 CMR 14.06, recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

(b) The employer has conspicuously posted a notice on bulletin boards where notices to employees are normally posted for a period of at least 20 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization in a specified bargaining unit;

(c) The employer shall not extend recognition to an employee organization if another employee organization has within the 20 day period notified the employer of a claim to represent any of the employees involved in said bargaining unit and has prior to or within such period filed a valid petition for certification which.is pending before the Commission; and,

(d) Such recognition shall be in writing and shall describe specifically the bargaining unit involved.

(e) The employee organization is in compliance with the applicable filing requirements set forth in M.G.L. c. 150E, §§13 and 14.

14.07: Employees of the Commonwealth

(1) With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, s. 4, shall be entertained, except in extraordinary circumstances where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section. Bargaining units shall be established on a state wide basis, with one unit for each of the following occupational groups, excluding in each case all managerial and confidential employees as so defined in M.G.L. c. 150E, s. 1.

NONPROFESSIONAL EMPLOYEES:

UNIT 1. Administrative and Clerical, including all nonprofessional employees whose work involves the keeping or examination of records and accounts or general office work;

UNIT 2: Service, Maintenance and Institutional, excluding building trades and crafts and institutional security;

UNIT 3: Building Trades and Crafts;

UNIT 4: Institutional Security, including correctional officers and other employees whose primary function is the protection of the property of the employer, protection of persons on

the employer's premises and enforcement of rules and regulations of the employer against other employees; and,

UNIT 5: Law Enforcement, including all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances, and regulations, and the preservation of public order.

PROFESSIONAL EMPLOYEES, as defined in M.G.L. c. 150E, s. 1:

UNIT 6: Administrative, including legal, fiscal, research, statistical, analytical and staff services;

UNIT 7: Health Care;

UNIT 8: Social and Rehabilitative;

UNIT 9: Engineering and Science; and,

UNIT 10: Education.

(2) Notwithstanding any provision of this section, nothing shall prevent the Commission from finding appropriate:

(a) the inclusion of related technical employees in any of the professional units designated 6 through 10, provided that the requirements of M.G.L. c. 150E, s. 3. have been met;

(b) one or more units of supervisory employees;

(c) separate units for employees of constitutional officers;

(d) separate units for employees of the judiciary;

(e) separate units for employees of the General Court; and,

(f) other units for employees of the Commonwealth specifically established by law.

14.08: Investigation and Hearing

(1) The Commission or a designated agent shall investigate a petition filed under M.G.L. c.150E, s. 4 to determine if there is reasonable cause to believe that a question of representation exists. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition or to provide the Commission with position descriptions, affidavits, or other information the Commission believes to be relevant to the issues raised by the petition. If the Commission, upon investigation, has reasonable cause to believe that a substantial question of representation exists, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing upon the question of representation before the Commission at a time and place fixed therein, A copy of the petition shall be served with such notice of hearing.

(2) The Commission or a designated agent shall investigate a petition seeking clarification or amendment of an existing bargaining unit to determine if there is a sufficient dispute of

relevant facts to warrant a hearing. The Commission or its agent may require any party to state in writing its position on any issue raised by the petition. If the Commission, upon investigation, has reasonable cause to believe there is a sufficient dispute of relevant facts, it shall provide for an appropriate hearing upon due notice and in connection therewith shall prepare and cause to be served upon the employer involved, upon any parties or upon employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under this chapter, whether named in the petition or not, a notice of hearing upon the issued raised in the petition before the Commission at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(3) For the purpose of informing employees affected by the filing of a petition under 456 CMR 14.00, the posting of notices or orders of the Commission on the premises of an employer in a place readily accessible to the employees shall constitute due notice to such employees. Copies of the petition and the notice of hearing shall be so posted by the employer.

(4) Hearings conducted under 456 CMR 14.08 may be conducted by the Commission or a hearing officer or other agent designated by the Commission. The procedures specified in 456 CMR 13.03. 13.07,13.08, 13.09, 13.10, 13.12, and 13.14 and the following procedures shall apply to all hearings conducted under 456 CMR 14.08:

(a) Subject to 456 CMR 14.08(4)(c), any party to the proceeding shall have the right to appear in person, by counsel or by other representative, to call, examine, and cross-examine witnesses and to offer documentary or other evidence in to the record;

(b) Any hearing conducted under 456 CMR 14.08 shall be open to the public, except in extraordinary cases as the Commission, in its discretion, may determine.

(c) The Commission, hearing officer, or other designated agent shall have the right to inquire fully into the facts relevant to the issues raised by the petition and shall not be bound by the rules of evidence observed by the courts. The Commission or hearing officer shall have the authority to:

1. To administer oaths and affirmations;

2. To issue subpoenas;

3. To rule on motions to revoke or modify subpoenas;

4. To limit examination and cross-examination of each witness to one representative per party;

5. To hold conferences for the settlement or clarification of the issues;

6. To dispose of procedural motions or similar matters;

7. To require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing;

8. To call, question and cross-examine witnesses; introduce or require the parties to produce relevant documentary evidence; solicit stipulations from the parties; take

administrative notice of evidence in related proceedings before the Commission; and to exclude cumulative evidence;

9. To require the parties to submit pre-filed direct testimony;

10. To continue the hearing from day to day or otherwise continue the hearing consistent with any applicable case processing time guidelines.

(d) The parties shall be permitted to make oral arguments at the close of the hearing or may be permitted by the Commission, hearing officer, or agent to file written briefs within ten days after the close of the hearing. Requests for additional time to file briefs will be granted only in extraordinary circumstances or to permit parties an opportunity to obtain tapes of the hearing, provided that the time period for filing briefs, including any extensions that may be permitted shall not exceed 21 days.

14.09: Record

The record in a hearing conducted under this section shall consist of the petition, notice of hearing, with return of service thereon, if available, appearance cards, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, depositions and amendments to any of the foregoing.

14.10: Disposition of Petitions

The Commission or designated hearing officer shall proceed, within a reasonable time after the introduction of evidence, or after oral argument or the submission of briefs, or further hearing, as it may determine, to dismiss the petition, or to direct an election by secret ballot among the employees in a bargaining unit determined by it to be appropriate, or to make other disposition of the matter.

14.11: Consent Election Agreements

Where a petition has been duly filed, the employer, employee organization or person or persons representing a substantial number of employees involved and any intervenor which has submitted the required show of interest may, subject to the approval of the Commission, enter into a stipulation for the waiving of hearing and the conducting of a consent election. Such stipulation shall include a description of the appropriate unit, the time and place for holding the election and the payroll or the personnel list to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the supervision of the Commission or its agents.

14.12: Elections

When the Commission determines that an election by secret ballot shall be conducted or when it approves an agreement for a consent election it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, an election conducted in person, or any other means ordered by the Commission.

(1) Unless otherwise directed by the Commission, all elections shall be by secret ballot, provided, however, that no employee organization shall appear on the ballot unless the employee organization is in compliance with M.G.L. c. 150E, s.s. 13 and 14 pursuant to the provisions of 456 CMR 16.05. Whenever two or more employee organizations are included as choices in an election, a participant may, upon its request, have its name removed from the ballot; provided, however, that such employee organization gives timely notice in writing to all parties and to the Commission disclaiming any representational interest among the employees in the unit and provided that the ballots have not been printed, or Commission notices of the election posted, prior to the Commission's receipt of the employee organization's written request to remove its name from the ballot.

(2) Any party may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded by the Commission. If the number of challenged ballots is sufficient to determine the outcome of the election, then within seven days after the tally of ballots has been furnished each party must file with the Commission a short statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter's eligibility. The Commission may require the parties to submit further evidence or argument, in order to determine whether a hearing is warranted.

(3) At the conclusion of the election, the Commission shall furnish to the parties a tally of ballots. Within seven days after the tally of the ballots has been furnished, any party may file with the Commission an original and four copies of objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions which the Commission may permit, the Commission shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Commission does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election. If the Commission determines that probable cause exists to believe that conduct interfering with either the conduct of the election or the results of the election occurred, it shall conduct such further investigation and/or hearing as it shall deem appropriate, or, if no material facts are disputed it may issue a decision on the objections without further fact-finding proceedings.

(4) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Commission shall forthwith certify the result of the election.

(5) The record in any hearing conducted pursuant to this section shall include the statement of objections or the statement concerning the eligibility of challenged voters, the responses thereto, and the tally of ballots, in addition to the applicable material specified in 456 CMR 14.09.

14.13: Runoff Elections

(1) The Commission may conduct a runoff election when a valid election results in no choice receiving a majority of the valid ballots cast. No runoff election shall be conducted while objections to the election are pending. If all eligible voters cast valid ballots in an election involving two or more labor organizations and 50% voted for one labor organization while 50% voted for another labor organization, the Commission will conduct a runoff election between the two labor organizations which each received 50% of the votes. If all eligible voters cast ballots in a runoff election involving two or more labor organizations, the Commission may decline to conduct a second runoff election absent evidence that a further runoff election would be likely to produce a different result than the prior election.

(2) Employees who were eligible to vote in the election shall be eligible to vote in a runoff election unless the Commission determines otherwise.

(3) The ballot in a runoff election shall provide for a selection between the choices receiving the largest and second largest number of votes in the prior valid election.

14.14: Re-run Elections

(1) The Commission may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot in the following situations:

(a) The ballot provided for a choice among two or more employee organizations and "neither" or "none" and the votes are equally divided among the several choices; or,

(b) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice (which did not receive a majority of valid votes cast); or,

(c) A runoff ballot provided for a choice between two employee organizations and the votes are equally divided (but see 456 CMR 14.13(1)).

(d) The Commission concludes that the results of the prior election are invalid due to objectionable conduct of the election or objectionable conduct affecting the results of the election.

(2) Upon the conclusion of either a re-run or a runoff election, the provisions of 456 CMR 14.12 shall govern, insofar as applicable.

14.15: Reinvestigation of Certification

For good cause shown, the Commission may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

14.16: Revocation of Certification

An employee organization currently certified to represent a bargaining unit may request the Commission to revoke its certification by filing a written request accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. A copy of the request shall be served simultaneously on the employer of the bargaining unit.

14.17: Deferral to AFL-CIO "No Raiding" Procedure

In any petition filed under 456 CMR 14.03 by an employee organization affiliated with the AFL-CIO seeking to represent a bargaining unit represented at the time of filing by another employee organization affiliated with the AFL-CIO, any party may request the Commission to defer processing the case for 30 days to permit the employee organizations to use the settlement provisions of the AFL-CIO "no-raiding" procedure. Such a request must be filed with the Commission within ten days following receipt of notice that the petition has been filed, or at least three days prior to the date of the scheduled hearing on the petition, whichever is earlier. Upon written request by any party the Commission may extend the 30-day deferral period. Copies of any request must be served upon all parties to the case.

14.18: Intervention

(1) Any employee organization, including the incumbent exclusive representative, if any, wishing to appear on any ballot or be deemed a necessary party to any agreement for consent election shall file a motion to intervene setting out the same information as required in a petition filed pursuant to 456 CMR 14.03. Except for good cause shown, all motions to intervene filed under 456 CMR 14.18 must be filed within 30 days of the date of the Commission's Notice of Hearing. Any incumbent exclusive representative who does not file a motion to intervene in accordance with 456 CMR 14.18 shall be deemed to have disclaimed interest in representing the employees in the petitioned-for bargaining unit and shall not appear on any ballot or be deemed a necessary party to any agreement for consent election.

(2) Any motion filed under 456 CMR 14.18 must be accompanied by the showing of interest required in 456 CMR 14.05.

(3) Pursuant to 456 CMR 12.02, any party filing a motion to intervene under 456 CMR 14.18 shall serve a copy of its motion on each of the parties named in the original petition and any other intervenors.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.150E, s.3

15.00: PROHIBITED PRACTICES

15.01: Charges

(1) All charges filed under 456 CMR 15.00 shall be in the form prescribed by the Commission.

(2) A charge that any employer or employee organization has engaged in or is engaging in any prohibited practice as defined in M.G.L. c. 150E, s.s. 10(a) and (b) may be made by any individual, employer, employee or employee organization.

(3) A charge made under this chapter shall be in writing and signed by the individual making it and shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

15.02: Contents of Charge

A charge made under 456 CMR 15.00 shall contain the following:

(1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.

(2) The full name and principal place of business of the employer, employee or employee organization against whom the charge is made, hereafter called the respondent.

(3) An enumeration of the subdivision of M.G.L. c. 150E claimed to have been violated and a clear and concise statement of all relevant facts which cause the charging party to believe that the Law has been violated.

15.03: Six-Month Limitation

Except for good cause shown, no charge shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Commission.

15.04: Investigation

(1) When a charge has been filed, an investigation may be conducted by the Commission or its agents. After such investigation, if it appears to the Commission that a hearing is required, it shall cause to be served upon the parties a complaint and a notice of hearing. The Commission may decline to issue a complaint or may withdraw any complaint issued unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) No complaint shall issue until the charging party has complied with the applicable provisions of M.G.L.c. 150E, s.s. 13 and 14.

(3) If, after a charge has been filed, the Commission declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of such declination to issue a complaint by filing a request therefor with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Commission. Within seven days of service of the request for review, any other party to the proceeding may file a response with the Commission. The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Commission may extend the time for the filing of such request for review.

15.05: Amendments

(1) The Commission or a hearing officer upon its own motion or upon the motion of any party may allow amendment of any complaint at any time prior to issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.

(2) Any complaint or amended complaint or any part thereof may be withdrawn by the Commission any time prior to the issuance of an order based thereon and upon such terms as the Commission may deem just and proper.

(3) Any charge or amended charge or any part thereof may be withdrawn by the charging party prior to the issuance of a complaint. After a complaint has been issued the charge or amended charge may be withdrawn only with the permission of the Commission.

15.06: Answers

(1) The respondent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Commission. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that it is without knowledge,

shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the respondent, the Commission may extend the time within which the answer shall be filed.

15.07: Burden of Proof

The charging party shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

15.08: Waiver of Hearing

If the respondent desires to waive hearing on the allegations set forth in the complaint or the amended complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceedings or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from violations of M.G.L. c. 150E alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Either of the first two such answers shall have the same force and effect as if all the allegations of the complaint were admitted to be true and, as in that case, shall be deemed to waive a hearing thereon and to authorize the Commission, without a hearing, without evidence and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violation of M.G.L. c. 150E charged in the complaint or to take such other action as provided in the Law. If the respondent does not file an answer, the Commission may proceed in a like manner.

15.09: Record

(1) The record in a hearing under this chapter shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, taped recording or stenographic transcription, stipulations, exhibits, documentary evidence, deposition and amendments to any of the foregoing. Whenever a hearing concerns in whole or in part facts or issues which were or could have been litigated in a related representation proceeding the Commission or hearing officer may incorporate in the record such parts of the record of the representation proceeding as may be appropriate.

(2) The record before the Commission on review of a hearing officer decision in a hearing designated for a hearing officer decision pursuant to 456 CMR 13.02(3) shall be as set forth in 456 CMR 13.15(6).

(3) The record in a hearing designated for a Commission decision in the first instance pursuant to 456 CMR 13.02(2) in which has issued recommended findings of fact and/or recommended conclusions of law shall include the recommended findings and conclusions.

15.10: Expeditious Scheduling of Investigation or Hearing

When temporary relief or a restraining order has been procured by the Commission or any party in connection with any charge or complaint under this chapter, the charge or complaint which has been the basis for such temporary relief or restraining order may be investigated or heard expeditiously. For other good cause shown by any party so requesting in writing, the Commission also may determine that a charge or complaint will be investigated or heard expeditiously.

15.11: Interim Bargaining Order

When it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative in violation of M.G.L. c. 150E, s. 10 and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the Commission shall, upon request, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute.When such interim order is issued, the Commission shall hold a hearing on the complaint in a summary manner and shallspeedily determine the issues raised.

15.12: Blocking Charges

(1) During the pendency of a petition filed pursuant to M.G.L. c. 150E, s. 4 any party to the petition may file a motion with the Commission requesting that a pending prohibited practice charge "block" the conduct of an election. Such motion shall be filed in accordance with the provisions of 456 CMR 13.07 and shall include a complete statement of the reasons supporting such motion. In addition a party contending that a pending prohibited practice charge should "block" the conduct of an election must, except for good cause shown, submit with the motion evidence sufficient to establish probable cause to believe that (a) the conduct alleged in the prohibited practice charge has occurred, (b) the alleged conduct violates the Law, and (c) the alleged unlawful conduct may interfere with the conduct of a valid election.

(2) Upon receipt of such a motion the Commission may investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter.

15.13: Referral to Other Agencies

At any time during the pendency of a charge at the Commission the Commission may refer the matter to the Board of Conciliation and Arbitration, or in the case of charges involving police or fire fighters, to the Joint Labor Management Committee, for such period of time as the Commission shall determine in order to promote resolution of the issues in the charge.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

16.00:VARIOUS PROVISIONS OF THE LAW

16.01: Filing of Contracts

For the purpose of 456 CMR 16.00, any collective bargaining agreement, the term of which does not exceed three years, which has been reduced to writing and executed by the employer or public employer and exclusive representative, shall be deemed to have been filed with the Commission, for the purposes of satisfying the provisions of M.G.L. c. 150E, s. 7, when an exact copy of said agreement has been filed by the employer, the exclusive representative, or any other person.

16.02: Requests for Binding Arbitration

(1) When a party requests the Commission to order binding arbitration, as provided in M.G.L. c. 150E, s. 8, the party so requesting shall provide the Commission the following information in writing:

(a) The full names and addresses of the employer and the employee organization involved.

(b) A clear and concise statement of the dispute concerning the interpretation or application of such written agreement. A copy of the grievance for which arbitration is requested must be submitted with the request, along with the date and disposition of the last step of the grievance procedure at which the grievance has been considered.

(c) A specific reference to the particular part or parts of the written agreement causing the dispute. A copy of the entire written agreement must be submitted with the request.

(d) Any other relevant facts which may be required in the request for binding arbitration forms issued by the Commission.

(2) Except for good cause shown, no request for binding arbitration shall be entertained by the Commission more than 60 days after exhaustion of the contractual grievance procedure, if any.

(3) All requests for an order of binding arbitration shall be filed in accordance with the requirements of 456 CMR 12.11.

Requests for an order of binding arbitration shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of his of her knowledge or belief.

(4) The request for an order of binding arbitration shall be served by the party filing it upon all other parties to the collective bargaining agreement at the same time that it is filed with the Commission.

(5) Within 15 days after receipt of a copy of a request for an order of binding arbitration, any other party to the collective bargaining agreement shall provide to the Commission a statement indicating whether the party joins in the request for binding arbitration, opposes the request, or takes no position, and all legal or other arguments in support of its position.

(6) Upon receipt of the submissions of the parties referenced above, the Commission may conduct such further investigation as it deems necessary and may issue an order directing the parties to submit the grievance to binding arbitration, may dismiss the request for an order directing binding arbitration, or may authorize such other disposition of the matter as may effectuate the purposes of M.G.L. c. 150E.

16.03: Strike Investigations

(1) When an employer petitions the Commission to make an investigation of an alleged violation of M.G.L. c. 150E, s. 9A(a), the employer shall include in the petition the following information:

(a) The name, address and telephone number of the employer, and its legal representative, if any.

(b) The names, addresses and telephone numbers, if known, of the employee organization and its officers or the public employees who are alleged to have violated or are about to violate the provisions of M.G.L. c. 150E, s. 9A(a).

(c) The name, address and telephone number of counsel for the employee organization or public employees, if known.

(d) The place of employment of the public employee or employees and the services affected. (e) A statement as to what facts cause the employer to believe that a strike has occurred or is about to occur or has been induced, encouraged or condoned.

(f) Any other relevant facts which may be of assistance to the Commission.

(2) (a)The employer shall serve a copy of the petition on an officer or representative of the employee organization and on all named public employees alleged to have violated or to be about to violate M.G.L. c. 150E, s. 9A(a). The petition served pursuant to this subsection shall contain a statement that the employer requests an investigation by the Commission and that the employee organization or employees may contact the Commission if they wish to present information pertinent to the investigation. The employer shall file an affidavit with the Commission specifying its compliance with 456 CMR 16.03(2).

(b) The Commission may require the employer to serve a notice of the time, date and place of an investigation, if any, to be conducted by the Commission, upon an officer or representative of the employee organization and on each named public employee alleged to have violated or to be about to violate M.G.L. c. 150E, s. 9A(a).

(c) The Commission may investigate the allegations of the employer's petition and may determine whether a strike is occurring or about to occur upon consideration of the employer's allegations and such other evidence as the Commission may consider.

(3) Upon determination that a violation of M.G.L. c. 150E, s. 9A(a) is occurring or is about to occur, the Commission may issue orders setting requirements and may seek enforcement thereof. The Commission may require the employer to serve such orders upon an officer or representative of the employee organization and upon each named public employee found to have violated M.G.L. c. 150E, s. 9A(a).

16.04: Petitions and Requests

All petitions and requests filed under 456 CMR 16.00 shall be in writing and shall contain a declaration by the person signing it, under the pains and penalties of perjury, that its contents are true to the best of his or her knowledge or belief. The original and two copies of the petition or request shall be filed with the Commission.

16.05: Compliance with M.G.L. c. 150E, s.s. 13 & 14

For the purpose of 456 CMR 16.00, compliance with M.G.L. c. 150E, s.s. 13 & 14 means that: (1) Each employee organization has filed the information required by said sections on forms provided by the Commission or the equivalent thereof, or for good cause shown, has received permission from the Commission to extend the time for filing.

(2) That each employee organization filing a petition or a charge, or seeking to intervene in a proceeding pending before the Commission, shall make a declaration under oath or affirmation that it has complied with the requirements of said sections. In the event of failure to comply with 456 CMR 16.05 the Commission may compel such compliance by appropriate order.

16.06: Advisory Rulings

(1) Whenever a party to collective bargaining negotiations challenges the negotiability of a written proposal submitted to it by the opposing party, either party may petition the Commission for an advisory ruling to determine whether the challenged proposal is within the scope of mandatory negotiations as defined in M.G.L. c. 150E, s. 6. The party petitioning for an advisory ruling shall simultaneously serve one copy of the petition upon the respondent or the respondent's attorney or representative. The filing of a petition pursuant to this section shall not affect either party's obligation to bargain under the Law.

(2) When a party petitions for an advisory ruling, it shall file an original and four copies of such petition providing the Commission with the following information:

(a) The full name and address of the petitioner;

(b) The full name and address of the petitioner's attorney or representative;

(c) The name and address of the respondent;

(d) The name and address of the respondent's attorney or representative;

(e) The text of the disputed proposal;

(f) A concise statement as to what aspect of the disputed proposal has been challenged and the substance of the challenge;

(g) Whether the parties are in negotiations, mediation or fact finding; and,

(h) Why an evidentiary hearing is not required.

(3) The respondent shall within ten days of service of the petition by the petitioner file an original and four copies of a response providing the Commission with the following information:

(a) Whether the information in the petition required by 456 CMR 16.06(2) is accurate and, if not, the reasons therefor.

(b) Whether the respondent considers the issuance of an advisory ruling appropriate and, if not, the reasons therefor.

(4) The Commission shall determine whether a petition presents an issue appropriate for an advisory ruling. If the petition is granted, the Commission may allow the following:

(a) the filing of stipulations of facts;

(b) the filing of briefs and/or;

(c) oral argument.

(5) The Commission may render, after the filing of briefs or oral argument, if any, its advisory ruling upon the issues involved or otherwise dispose of the petition.

(6) In any proceeding under M.G.L. c. 150E, s. 11 which is based in whole or in part on the subject matter of proceedings under 456 CMR 16.06, the record made under 456 CMR 16.06 shall be made a part of the Section 11 proceeding.

16.07: Rule-making Hearings

Whenever, pursuant to the provisions of M.G.L. c. 23, s. 9R or M.G.L. c. 30A, a rule-making hearing is held by the Commission, the following procedural rules apply to the extent required by M.G.L. c. 30A.

(1) The Commission will provide public notice of the proposed rules as required by M.G.L. c. 30A. Persons desiring to be heard with respect to proposed standards, rules or regulations including employers, employee organizations and members of the public are requested to appear at the designated time and place. A record of each such hearing will be kept.

(2) Interested parties may be required to submit written statements regarding proposed standards, rules or regulations and such questions as they may have in advance of the hearing date and the time for such questions and responses may be limited by the Commission.

(3) Such questions as interested parties may have should be submitted in advance, whether or not the submitting party wishes to appear, since questions to witnesses may only be put by the Commission or its agents. The order of presentation at the hearing will be as follows:

(a) The Commission will present the proposed standards, rules or regulations and an explanation thereof.

(b) Persons requesting the opportunity to speak, and who at the same time submit four copies of a memorandum outlining their respective positions, will each be afforded no more than 15 minutes to make an opening statement, in the order in which such requests are received by the Executive Secretary of the Commission, provided such requests are received five days in advance of the hearing. Each request to speak must contain an estimation of the amount of time required to make a further presentation following opening statements, if desired, and a justification therefor.

(c) Following the opening statements, persons who complied with the provisions of 456 CMR 16.07(3)(b) may be allowed additional time for a further presentation, at the discretion of the Commission, in the order followed for the opening statements.

(d) Other persons who request to speak, prior to or during the course of the hearing, may do so subject to the availability of time and to the Commission's discretion.

(4) The Commission may limit presentation which are redundant, irrelevant or repetitious. Written statements or memoranda may be submitted for consideration by the Commission within seven days after the close of a hearing or such further time as, upon written application, the Commission shall allow.

(5) Except to the extent that such waiver or modification may be inconsistent with the law, any of the procedures described herein relating to the conduct of a hearing may be waived or modified by the Commission to prevent undue hardship or manifest injustice or as the expeditious conduct of business so requires.

(6) A copy of M.G.L. c. 150E and a copy of the proposed standards, rules or regulations shall be made available for inspection at the Boston office of the Commission and appropriate notice of any hearing given, in accordance with the requirement of M.G.L. c. 30A, secs. 3 and 9.

16.08: Compliance with Enforcement of Commission Orders

(1) When a party requests the Commission to seek enforcement of any order issued by the Commission or a member or agent of the Commission, the party so requesting shall provide the Commission the following information, in writing:

(a) The name and address of the party requesting enforcement;

(b) The name and address of the requesting party's attorney or representative, if any;

(c) The name and address of the party alleged to be in non-compliance with an order of the Commission or of a member or agent of the Commission;

(d) The name and address of the alleged non-complying party's attorney or representative;

(e) The Commission case number and text of the specific order or portion thereof which the requesting party claims has not been complied with; and,

(f) A statement as to what facts cause the requesting party to believe that there has been non-compliance with the specific order described in 456 CMR 16.08(1)(e). Such statement shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury.

(2) The party requesting the Commission to seek enforcement of an order shall serve a copy of its request on the opposing party or its attorney or representative, if any.

(3) The party alleged to be in non-compliance with an order of the Commission or a member or agent of the Commission shall, within ten days of service of the request for enforcement, or within such other time as the Commission shall establish, file an original and four copies of the response, providing the Commission with the following:

(a) A stipulation that the information in the request for enforcement is accurate; or,

(b) If it is contended that the information is not accurate, an explanation of the nature of any alleged inaccuracy and the reasons therefore. Such reasons shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury, specifying the steps taken to fully comply with the orders or portions thereof of the Commission or any member or agent.

(4) In the event of the failure of the party alleged to be in non-compliance to respond to the request for enforcement or in the event of admission of non-compliance or in the event that the information provided in support of compliance is insufficient, the Commission may institute appropriate enforcement proceedings.

(5) If the Commission determines that:

(a) the party requesting compliance has failed to provide the information in 456 CMR 16.08(1);

(b) the party alleged to be in non-compliance has provided sufficient information to warrant a conclusion that appropriate compliance has occurred; or,

(c) that no further action is necessary; the Commission may decline to institute enforcement proceedings.

(6) If the Commission determines that there is a genuine dispute as to compliance, it may order that a hearing be held to determine whether compliance has occurred. At any hearing concerning the alleged non-compliance, the party required to comply with the Commission's order shall have the burden of proving such compliance by a preponderance of the evidence. The provisions of 456 CMR 13.00 et. seq. shall govern the proceeding insofar as applicable.

(7) (a) Upon determination that a party is in non-compliance with an order of the Commission or of a member or agent thereof, the Commission may institute appropriate proceedings for enforcement of the order.

(b) If the Commission, after consideration of the evidence and arguments of the parties, judges that the purposes of the Law would not be effectuated by instituting proceedings for enforcement, it may decline to institute proceedings for enforcement and shall so notify the parties.

(8) The party requesting compliance may be required to provide the Commission with assistance, including the furnishing of affidavits, witnesses and documents in preparation for an enforcement proceeding and may be required to bear the expenses associated therewith.

(9) If, following receipt of a final court judgement enforcing a Commission order, the Commission declines to seek execution of the court judgement the Commission's declination shall not preclude the party who desires such execution from seeking it independent of the Commission.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

17.00: AGENCY SERVICE FEE

17.01: Scope of Chapter

The purpose of 456 CMR 17.00 is to implement the provisions of M.G.L. c. 150E, s. 12. 456 CMR 17.00 shall be applicable only to proceedings arising under M.G.L. c. 150E, s. 12.

17.02: Definitions

Bargaining agent shall mean the employee organization recognized by the employer or certified by the Commission as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining.

Bargaining unit shall mean that group of employees represented by a bargaining agent which has been recognized by the employer or certified by the Commission pursuant to M.G.L. c. 150E and 456 CMR et seq..

Collective bargaining agreement shall mean a written agreement between a public employer and a bargaining agent which sets forth wages, hours, or other terms and conditions of employment for employees in a bargaining unit.

Escrow account shall mean an account in a bank or comparable financial institution jointly administered by and payable to the charging party and the respondent bargaining agent.

Service fee shall mean a sum of money which an employee is required as a condition of employment to pay to a bargaining agent pursuant to a collective bargaining agreement as provided in M.G.L. c. 150E, s. 12.

Tender shall mean the actual production and unconditional offer to a representative of the bargaining agent of an amount no less than the amount demanded as a service fee.

17.03: Ratification

(1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail in a mail ballot ratification procedure.

(2) The ratification vote shall be taken by mail or at a meeting or meetings called by the bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 456 CMR 17.03(3).

(3) The vote shall be publicly counted, and the majority of valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

(4) The bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c. 150E, s. 14.

(5) Notice of the ratification procedure shall be given by the bargaining agent in like manner to all employees in the bargaining unit at least five calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than five days. The notice shall include the following information:

(a) The time and place of the meeting(s) or details of the mail ratification procedure;

(b) A statement that the proposed collective bargaining agreement, if ratified, will require payment of a service fee as a condition of employment;

(c) The current amount of the service fee;

(d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ratification;

(e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;

(f) The full identity, including affiliations, of the bargaining agent; and,

(g) A statement that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

17.04: Impermissible and Permissible Costs

(1) Costs attributable to the following shall be deemed impermissible in computing a service fee:

(a) Expenditures for political candidates or political committees formed for a candidate or political party;

(b) Establishing and publicizing of an organizational preference for a candidate for political office;

(c) Lobbying or efforts to enact, defeat, repeal or amend legislation or regulations unrelated to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;

(d) Expenditures for charitable, religious or ideological causes not germane to a bargaining agent's duties as the exclusive representative;

(e) Benefits and activities which are:

1. not germane to the governance or duties of the bargaining agent, and,

2. available only to the members of the employee organization which is the exclusive bargaining agent;

(f) Fines, penalties or damages arising from the unlawful activities of a bargaining agent or a bargaining agent's officers, agents or members;

(g) Overhead and administrative costs allocable to any activity listed in 456 CMR 17.04(a) through (f).

(2) Costs attributable to the following shall be deemed permissible to the extent that they are not deemed impermissible under 456 CMR 17.04(1).

(a) Preparation, negotiation, and ratification of collective bargaining agreements;

(b) Adjusting employee grievances and complaints;

(c) The public advertising of positions on the negotiating of, or provisions in, collective bargaining agreements, as well as on matters relating to the ollective bargaining process and contract administration;

(d) Purchasing of materials and supplies used in matters relating to the collective bargaining process and contract administration;

(e) Paying specialists in labor law, negotiations, economics and other subjects for services used in matters relating to working conditions and to the collective bargaining process and contract administration;

(f) Organizing within the charging party's bargaining unit;

(g) Organizing bargaining units in which charging parties are not employed, including units where there is an existing exclusive bargaining agent;

(h) Defending the employee organization seeking a service fee against efforts by other unions or organizing committees to gain representation rights in units represented by the employee organization seeking an agency fee or by its affiliates;

(i) Proceedings involving jurisdictional controversies under the AFL-CIO constitution or analogous provisions governing bargaining agents that are not affiliated with the AFL-CIO;

(j) Lobbying or efforts to enact, defeat, repeal, or amend legislation or regulations relating to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the bargaining agent or its affiliates;

(k) Paying costs and fees to labor organizations affiliated with the bargaining agent seeking an agency fee;

(l) Meetings and conventions;

(m) Publications of the bargaining agent seeking a service fee;

(n) Lawful impasse procedures to resolve disputes arising in connection with negotiating and enforcing collective bargaining agreements;

(o) Professional services rendered to the exclusive bargaining agent and its affiliates;

(p) Wages and benefits for persons employed by the bargaining agent;

(q) All other activities not listed in 456 CMR 17.04(1);

(r) Overhead and administrative costs allocable to any item in 456 CMR 17.04(2)(a) through (q).

17.05: Demand for Payment of a Service Fee

(1) A bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.

(2) A bargaining agent making a written demand pursuant to 456 CMR 17.05(1) shall attach to the demand a copy of the entire text of these Rules relating to agency service fee (456 CMR 17.00).

(3) No demand for payment of a service fee under this section shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c. 150E, s.s. 13 and 14.

17.06: Challenge of a Service Fee

(1) Employees may challenge the validity or amount of a service fee by filing a prohibited practice charge with the Commission.

Validity shall mean whether there has been compliance with the provisions of 456 CMR 17.03 and 17.05.

Amount shall mean whether some or all of the service fee demanded by a bargaining agent is impermissible under 456 CMR 17.04(1).

(2) Except for good cause shown, a charge challenging the amount of a service fee or its validity under 456 CMR 17.03 or 17.05 shall be filed within six months after the bargaining agent has made a written demand for payment of the fee pursuant to 456 CMR 17.05.

(3) A charge challenging the validity or amount of a service fee shall contain the following:

(a) The full name(s) and address(es) of the individual(s) making the charge.

(b) The full name and address of the bargaining agent against whom the charge is made.

(c) The date the bargaining agent made a written demand for payment of the fee pursuant to 456 CMR 17.05.

(d) The amount of the regular membership dues.

(e) The amount of the service fee assessed by the bargaining agent, and the effective dates of the contract under which the fee was assessed.

(f) If an employee is contesting the validity of the service fee under 456 CMR 17.03 or 17.05, a clear and concise statement of the reasons for the charge, including all relevant facts on which the charge is based.

(g) If an employee is contesting the amount of the fee, a general statement of the reasons for the charge.

(h) The signature of the individual making the charge or his or her representative.

(i) A statement as to whether the charging party has used the bargaining agent's rebate procedure and the result of that procedure.

(j) A declaration by the individual making the charge, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

17.07: Escrow Account

(1) An employee filing a charge contesting the amount of a service fee with the Commission shall jointly establish and administer an escrow account with her/his bargaining agent.

(2) The amount deposited in the escrow account must be equal to the full amount of the service fee for the disputed period of time, or equal to whatever amount remains in dispute after partial settlement between the employee and the bargaining agent seeking the fee.

(3) Except for good cause shown, the charging party shall file with the Commission evidence of the establishment of an escrow account before the date of the Commission's investigation of the charge pursuant to 456 CMR 17.09. Failure to submit such evidence may result in dismissal of the charge.

(4) Failure of the bargaining agent to cooperate in the establishment of the escrow account may waive its right to the establishment of the escrow. If the bargaining agent waives its right to an escrow, the charging party will not be required to pay a service fee until the Commission determines the fee due pursuant to 456 CMR 17.13.

(5) Until a final order is issued by the Commission, the charging party shall continue to pay into the escrow account as such sums become due an amount equal to the service fee, or equal to whatever amount remains in dispute following the Commission's investigation pursuant to 456 CMR 17.09.

17.08: Deferral to Rebate Procedure

At any time after the establishment of an escrow account pursuant to 456 CMR 17.07, the Commission may defer to a bargaining agent's procedure for rebating impermissible expenses to members of the bargaining unit. In order for the Commission to consider deferral, a rebate procedure must meet the following standards:

(1) Disputed amounts shall be placed in escrow during the pendency of the rebate proceedings;

(2) The bargaining agent shall establish the justification for the fee demanded;

(3) The bargaining agent shall make available to the dissenting employee the books and records on which the bargaining agent relies to justify the amount of the service fee demanded;

(4) The procedure shall provide for a hearing or similar proceeding before a neutral decision-maker in order to determine impermissible and permissible costs used in determining the fee, in accordance with the standards set forth in 456 CMR 17.04;

(5) At any hearing or similar proceeding, the dissenting employee shall be entitled to a representative of her or his choice;

(6) The costs arising from the hearing before a neutral decision-maker shall be borne by the bargaining agent; and,

(7) The procedure shall not be unduly lengthy, cumbersome, or burdensome.

17.09: Investigation

(1) When a charge has been filed under this chapter, the Commission or its designated agent shall conduct an investigation to ascertain whether there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or that a dispute exists concerning the amount of the fee demanded.

(2) Either at or before the investigation, the bargaining agent shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.

(3) If, upon investigation, the Commission determines that any portion of the service fee is clearly payable to the bargaining agent or the charging party, that portion of the fee shall be

released from the escrow account and promptly remitted to the bargaining agent or the charging party. The Commission's determination shall be based upon the financial data made available by the bargaining agent for its previous contract period. In the case of a newly-certified or recognized bargaining agent whose first contract contains a valid service fee clause, the Commission shall make the determination based on the bargaining agent's actual or estimated costs. The determination shall be valid over the term of the collective bargaining agreement under which the service fee is demanded.

(4) The charging party shall be required to continue paying into the escrow account only that portion of the service fee which the Commission determines remains in dispute. Such payments to the escrow account shall be made as they become due. The portion of the fee determined by the Commission to be owing to the bargaining agent shall be remitted to the bargaining agent as such payments become due.

17.10: Complaint

(1) If, after investigation, there is cause to believe that the contested service fee is invalid under 456 CMR 17.03 or 17.05 or the amount of the service fee remains in dispute, the Commission shall serve a written complaint upon the parties and shall provide for an appropriate hearing. The Commission may decline to issue a complaint unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) If, after investigation, the Commission declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of the decision not to issue a complaint by filing a request for review with the Executive Secretary within ten days from the date of receipt of notice of such refusal by the Commission. The request shall contain a statement of the reasons upon which the request is based. Upon its own motion or upon proper cause shown by any of the parties to the proceeding, the Commission may extend the time for filing of such a request for review.

17.11: Amendments

(1) Upon its own motion, or upon the motion of any party, the Commission or its hearing officer may allow amendment of any complaint at any time prior to the issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.

(2) Any charge or amended charge filed, or any part thereof, may be withdrawn by the charging party prior to the issuance of a complaint.

(3) Any complaint or amended complaint, or any part thereof, may be withdrawn by the Commission at any time prior to the issuance of an order based thereon and upon such terms as the Commission may deem just and proper.

17.12: Answers

(1) The bargaining agent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Commission. The bargaining agent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless it is without knowledge, in which case it shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the bargaining agent shall state in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the bargaining agent, the Commission may extend the time within which an answer shall be filed.

17.13: Hearing and Final Determination

Except for good cause, the Commission will schedule a hearing pursuant to 456 CMR 13.00 to make a final determination on the amount of the service fee either after the collective bargaining agreement under which the fee is demanded has expired or at the end of the period of time for which the fee is demanded. At least seven days before the hearing, the bargaining agent upon request shall make available to the charging party the books and records on which the bargaining agent relies to justify the amount of the service fee demanded.

17.14: Record

(1) The record in an expedited or formal hearing under 456 CMR 17.00 shall consist of the charge, the complaint, notice of hearing, return of service of complaint and notice of hearing, answer, motions, rulings, orders, tape recording or stenographic transcription, stipulations, exhibits, documentary evidence and amendments to any of the foregoing.

(2) The record before the Commission on review of a hearing officer's decision shall be as set forth in 456 CMR 13.15(6).

17.15: Burden of Proof

(1) When a complaint issued under 456 CMR 17.00 alleges that a service fee is invalid under 456 CMR 17.03 or 17.05, the burden of proof shall be on the charging party to establish the defects by a preponderance of the evidence.

(2) When a complaint issued under 456 CMR 17.00 alleges that part or all of the amount of a service fee is impermissible under 456 CMR 17.04, the burden of proof shall be on the bargaining agent to establish by a preponderance of the evidence that the contested amounts are permissible.

17.16: Non-payment of Fee

(1) If an employee, after demand by the bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the bargaining agent may request the employee's termination or other sanction. The employer, after reasonable notice to the employee, shall terminate or otherwise sanction the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated or otherwise sanctioned who has tendered the required service fee prior to the decision to terminate or otherwise sanction; and provided further that payment of a service fee shall not be required before the 30th day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(2) No employee who has filed a charge with the Commission and established an escrow account, if required under the provisions of 456 CMR 17.06 and 17.07, shall be terminated or otherwise sanctioned for failure to pay the service fee during the pendency of the charge before the Commission.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R; c.30A, s.3

18.00: DESIGNATION OF COMMISSION AGENTS

18.01: Executive Secretary

The Executive Secretary is hereby designated by the Commission as its agent: to prepare an agenda for all Executive Sessions; to keep the Commission informed as to all matters pending and to furnish the Commission a full list of matters and issues which are to be discussed or voted upon at an Executive Session; to make a permanent record of the disposition of any matter discussed and/or voted upon at an Executive Session; to direct and supervise certain designated employees of the Commission and to assign various duties, under the direction of the Commission, to those employees and inform the Commission of same.

18.02: Attorneys

The Commission may designate any attorney it employs, as its agent:

(1) to promote any inquiry necessary to the performance of the Commission's functions;

(2) to conduct any election as directed by the Commission or designated agent thereof;

(3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00; and,

(4) to appear for and represent the Commission in any case in court.

18.03: Other Agents

The Commission may designate any person it employs as its agent:

(1) to prosecute any inquiry necessary to the performance of the Commission's functions;

(2) to conduct any election as directed by the Commission or designated agent thereof; and,

(3) to conduct investigations, conferences or hearings as specified in 456 CMR 12.00, 13.00, 14.00, 15.00, 16.00 and 17.00.

18.04: Special Designations

The foregoing designations shall not be construed to limit the power of the Commission to make other special designations as may, in its discretion, be necessary or proper to effectuate the purposes of M.G.L. c. 150E and to appoint any attorneys, hearing officers or

other persons as it may from time to time deem necessary for the proper performance of its duties as designated in the Law.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

19.00: ADVISORY COUNCIL ON EMPLOYMENT RELATIONS (ACER)

19.01: Creation

There is created in the Labor Relations Commission an Advisory Council on Employment Relations appointed by the Commission, consisting of an equal number of representatives of employees, employers and nonpartisan practitioners or academicians. In appointing the representatives of employees, the Commission shall give representation to affiliated and nonaffiliated employee organizations representing employees within the jurisdiction of the Commission. In appointing the representatives of employers, the Commission likewise shall give representation to employers within the jurisdiction of the Commission. The members of the Commission shall be ex officio members of the Council.

19.02: Council Chairman

The chairman of the Council shall be designated from time to time by the Commission and shall have the power to designate such committees and subcommittees as he or she shall deem appropriate.

19.03: Function

The Commission may refer to the Advisory Council on Employment Relations for its study and advice any matter concerning the relations of employers and employees.

19.04: Removal

The Commission may, subject to the approval of the Council, remove any member of the Council prior to the expiration of his or her appointment term.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

20.00: CONSTRUCTION OF RULES, AMENDMENT AND PUBLICATION

20.01: Construction

456 CMR 20.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150E.

20.02: Amendment

456 CMR 20.00 may be amended or rescinded by the Commission from time to time.

20.03: Publication

456 CMR 20.00 shall be published in convenient form.

20.04: Effective Date

456 CMR 20.00 shall become effective on December 7, 1990.

REGULATORY AUTHORITY: M.G.L. c.23, s.9R

B. BOARD OF CONCILIATION AND ARBITRATION

457 CMR 2.00: RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION

2.01: Scope of Rules

M.G.L. c. 30A and M.G.L. c. 150E, s. 9, provide that the Board of Conciliation and Arbitration (hereinafter the Board) can adopt such rules as may be required to regulate the conduct of mediation and fact-finding proceedings in public employment, including state, county, municipal, and district government.

2.02: Confidentiality

Public policy and the success of the Board's mission require that the Board and its employees maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, s. 10A, and M.G.L. c. 150E, s. 9, any person acting as a mediator, including a fact-finder or interest arbitrator, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

2.03: Initiation of Interest Mediation and Fact-Finding

(1) Petition for Mediation and Fact-Finding. If a public employer and an employee organization have negotiated for a reasonable period of time and an impasse exists over one or more issues arising out of the negotiations, the public employer, the employee organization, or the parties jointly, may file a Petition for Mediation and Fact-Finding with the Board (MBCA FORM F-1). If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of this subparagraph. The party or parties requesting mediation and fact-finding shall mail the original petition and one copy, signed by the petitioning party or parties, to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

Upon receipt, the Board will stamp the petition with the date of receipt. If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition and a copy of the pertinent collective bargaining agreement to the Board in the manner set forth above.

(2) Unilateral Petitions. A petitioning party proceeding unilaterally must serve the petition on the principal representative of the other party by first-class mail, postage prepaid. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these Rules. Failure to so state will suspend the processing of the petition.

2.04: Voluntary Interest Mediation

At any time during bargaining, whether or not a Petition for Mediation and Fact-finding has been filed, an employee organization or a public employer may request mediation assistance in resolving a collective bargaining dispute. The Board will provide mediators for this purpose.

2.05: Appointment of a Mediator

(1) Investigation. Upon receipt of the petition, the Board shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. The Board will notify the parties of the results of its investigation within 10 days of the filing of the petition if it finds that the parties are not at impasse. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

(2) Appointment. Within five days of the determination of an impasse, the Board will promptly appoint a mediator to assist the parties in the resolution of the impasse.

(3) Selection. The mediator may be appointed from the staff of the Board unless the parties have stated in the Petition for Mediation and Fact-Finding that they jointly request that the Board appoint an outside mediator. If the parties request an outside mediator they shall specify on the Petition for Mediation and Fact-Finding the name, address, and

telephone number of the person so selected. If the parties jointly request the appointment of a particular staff mediator, due consideration will be given to such request.

(4) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify him or her as an impartial mediator.

(5) Fees. There will be no cost to the parties for a staff mediator. The cost of an outside mediator, selected by the parties, will be equally divided between the parties unless they agree otherwise.

2.06: Mediator's Function

The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session. However, the mediator retains ultimate control over the scheduling of mediation sessions. Pursuant to M.G.L. c. 150E, s. 9, the mediator is empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

2.07: Public Access

There shall be no public access to mediation sessions.

2.08: Mediator's Report

After a reasonable period of mediation, the staff or outside mediator shall report in writing to the Board the results of his or her efforts to resolve the impasse. This confidential report will contain the following information:

(1) The names of the parties;

(2) A statement of the dates of the first contacts with both the employer and the employee organization;

(3) A brief description of the unresolved issues which existed at the beginning of the mediation effort;

(4) A statement of the issues that have been resolved through the mediation effort;

(5) A statement of the issues that are still unresolved, if any; and

(6) A recommendation as to whether the Chairman of the Board should invoke fact-finding.

2.09: Designation of a Fact-Finder

(1) Appointment by the Board. If the mediator's report (457 CMR 2.08) reveals that an impasse continues to exist, the Board shall send written notice to both parties informing them that mediation has not resolved the impasse and that the Board intends to act upon the petition for mediation and fact-finding by appointing a fact-finder. Promptly thereafter, the Board will appoint a fact-finder from its list of qualified individuals.

(2) Selection by Alternative Means. If the parties jointly agree to select the fact-finder in an alternative manner, they must jointly inform the Board before the Board appoints a fact-finder. The parties must also inform the Board of the name, address, and telephone number of the fact-finder so selected.

(3) Letter of Appointment. After a fact-finder has been selected or appointed, the Board will promptly send a letter of appointment and a copy of the petition to the fact-finder. Copies of the letter will be sent to both parties. The fact-finder is required to promptly notify the Board whether he or she accepts the appointment.

(4) Disqualification or Withdrawal of the Fact-Finder. If the fact-finder has represented an employer or an employee organization within the last 12 months, the appointment will be absolutely revoked by the Board. Moreover, the fact-finder is required to disclose to the Board and the parties any circumstances likely to create a presumption of bias or which the fact-finder believes might disqualify him or her as an impartial fact-finder. Following such a disclosure, the Board will revoke the fact-finder's appointment unless both parties waive this presumptive disqualification. If a fact-finder is disqualified, resigns, dies, or withdraws from his or her duties, the Board will appoint another fact-finder in accordance with 457 CMR 2.09(1).

2.10: Withdrawal of Fact-finding Petition

A fact-finding petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a fact-finder. After the appointment of a fact-finder, a fact-finding petition may be withdrawn only by joint agreement of the parties. The parties will compensate the fact-finder for such services as he or she performed in accordance with 457 CMR 2.17.

2.11: Fact-finder's Responsibilities

(1) Authority. The appointed fact-finder will have the authority and responsibility for the conduct of the fact-finding proceedings, and will have sole discretion in deciding any issues of procedure. The fact-finder shall immediately advise the Board if a work stoppage has occurred or is imminent.

(2) Scheduling of Conferences and Hearings. The fact-finder shall consult with each party concerning the time, date, and place of each meeting or hearing. The fact-finder shall make an effort to expedite the process. The fact-finder will be sole judge of scheduling, and his or her ruling as to time, date, place, adjournment, or continuance of any meeting or

hearing will be final and binding. Within a reasonable period of time prior to any hearing, the fact-finder shall serve upon each of the parties and the Board, by first class mail, postage prepaid, a written notice of the time, place, and date of such hearing.

2.12: Mediation during Fact-Finding

(1) Authority. The fact-finder or mediator has the authority to mediate the dispute.

(2) Mediation Proceedings. When acting as mediator, the fact-finder may hold separate or joint meetings with the parties. There shall be no public access to mediation sessions.

(3) Report to the Board. If the dispute is settled through mediation by the fact-finder, the fact-finder shall promptly notify the Board of the date and terms of the settlement.

2.13: Hearing before the Fact Finder; Subpoenas

(1) Proceeding in the Absence of a Party. Fact-finding may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.11, fails to appear for a conference or hearing or to obtain a continuance. The fact-finder may choose not to base the report solely upon the presentation of the appearing party. If any party to the dispute fails to appear or to cooperate with the fact-finder, the fact-finder may determine what further evidence is required and may obtain and use any evidence deemed relevant. The fact-finder shall disclose to the appearing party what evidence he or she intends to use and shall give the appearing party an opportunity to respond to such evidence.

(2) Waiver of Fact-Finding Hearing. The parties may agree to waive the fact-finding hearings. The fact-finder is authorized to issue the report on the basis of whatever documents and stipulations are submitted.

(3) Representation. Any party may be represented by counsel or other person of its choosing. Such counsel or representative has exclusive authority to present that party's case.

(4) Third Party Intervention. The fact-finder has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.

(5) Order of Proceedings. The fact-finder will:

(a) Obtain from the parties a statement of the issues in dispute;

(b) Determine the order in which the parties present their cases. In the case of a unilateral petition, the petitioning party will ordinarily present its case first;

(c) Afford each party a full and fair opportunity to present all relevant evidence.

(6) Fact-Finder's Authority to Issue Subpoenas and Administer Oaths. The fact-finder shall have the authority, upon delegation of the Board, to administer oaths, to take the testimony of any person under oath, and to issue subpoenas to compel the attendance of witnesses or the production of documents (MBCA Form CA5). A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective.

(7) Waiver of Objections. Any party to a fact-finding hearing who fails to make a timely objection, as determined by the fact-finder, to an infraction of these rules will be deemed to have waived that objection.

(8) Briefs. Upon the close of the hearings each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs will be established by the fact-finder after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding will be at the discretion of the fact-finder.

2.14: Fact-Finding Report

(1) Form and Contents. After the close of the hearing and the submission of briefs, if any, the fact-finder will prepare, sign, and date a written fact-finding report. It should include:

(a) a statement of the issue(s);

(b) the findings of fact regarding the issue(s);

(c) a statement of the recommendation for each issue;

(d) the rationale for the recommendation reached on each issue; and

(e) a summary cover sheet containing a complete statement as to the fact-finder's recommendations on all issues.

(2) Service of the Report. The fact-finder must send, by certified mail, two copies of the fact-finding report to the Board and one copy to the counsel or representative of each party to the dispute.

(3) Clarification of Report. One or both parties may request that the fact-finder clarify any recommendation in the fact-finding report. This request must be received by the Board within seven days of the date of the report. The party(ies) making this request must also send a copy of the request to the fact-finder. The fact-finder will attempt to dispose of such request within ten days of the Board's receipt of the report. The fact-finder must promptly determine whether the clarification is warranted and then notify the parties and the Board in writing or by conference of the disposition of the request for clarification.

(4) Action on Report. If the parties fail to notify the Board as to the disposition of the fact-finder's report within ten days after the Board's receipt of the report, the Board will assume that no agreement between the parties has been reached on the issues in dispute.

(5) Publication of the Report. If the impasse remains unresolved ten days after the Board's receipt of the fact-finder's report, the Board will make it public.

2.15: Termination of Fact-Finding

Unless the parties agree otherwise, the fact-finder will perform no further service in connection with the dispute once the fact-finding report and clarification, if any, have been served. The fact-finder will keep the Board informed of his or her activities and will notify the Board promptly of any settlement of the dispute and of the terms of the settlement.

2.16: Mediation after Fact-Finding

If the parties are unable to come to agreement after the receipt of the fact-finder's report, a staff mediator may be appointed to assist them in resolving the dispute.

2.17: Compensation of Fact-Finder

The fact-finder will be entitled to the compensation rate contained in his or her resume on file with the Board, for each day or portion thereof spent in hearing, preparation, and issuance of the fact-finder's report, including clarification, if any, and in mediation. The fact-finder will also be entitled to reimbursement for necessary and ordinary expenses. The costs for fact-finding will be equally divided between the parties unless they agree otherwise. The fact-finder's bill showing the amount payable by each of the parties must accompany the final fact-finding report. The fact-finder may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills must also be sent to the Board. The parties shall make payment directly to the fact-finder.

2.18: Certification of Completion of the Collective Bargaining Process

Either or both parties may request the Board to certify to the parties that the collective bargaining process, including mediation, fact-finding, or arbitration, if applicable, has been completed. If the Board determines that the dispute resolution mechanisms provided for in M.G.L. c. 150E, s. 9 have been exhausted, it will certify to the parties that the collective bargaining process has been completed.

2.19: Voluntary Interest Arbitration

Upon joint request of the parties, the Board will administer any written and duly authorized agreement to enter into final and binding interest arbitration of a collective bargaining dispute.

2.20: Private Sector Interest Mediation

Upon request, the Board may appoint a mediator to assist in the resolution of a private sector interest mediation dispute.

2.21: Severability

If any of 457 CMR should be declared invalid by a final order or decree of a court with proper jurisdiction, such invalid provisions or rules will be severed.

REGULATORY AUTHORITY: M.G.L. c. 150, s. 2.

457 CMR 3.00: RULES FOR GRIEVANCE MEDIATION AND ARBITRATION IN THE PUBLIC AND PRIVATE SECTORS

3.01: Scope of Rules

457 CMR 3.00 will govern the procedures for mediation and arbitration of grievances between parties whenever in their collective bargaining agreement(s) or by submission they have provided for mediation and/or arbitration through the Board of Conciliation and Arbitration. 457 CMR 3.00 will apply to the mediation and arbitration of grievances arising in the public sector pursuant to M.G.L. c. 150E s. 8, and in the private sector pursuant to M.G.L. c. 150.

3.02: Confidentiality

Public policy and the success of the Board's mission require that the Chairman and employees of the Board maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, s. 10A, and M.G.L. c. 150E, s. 9, a mediator, including an arbitrator acting in a mediatory capacity, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers, or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

3.03: Voluntary Grievance Mediation

At any time, an employee organization and employer may request mediation assistance for problems arising from the interpretation or application of terms of a collective bargaining agreement. This includes preventive mediation prior to the filing of a grievance and grievance mediation. A party making such a request must file a petition with the Board

(MBCA Form F-2M). The original petition and one copy, signed and dated by the petitioning party(ies), should be sent to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

3.04: Appointment of Mediator

(1) Appointment. Upon receipt of the Grievance Mediation Petition, the Board will promptly ascertain whether the parties agree to grievance mediation. If the parties agree, the Board will appoint a staff mediator. Alternatively, should the parties request an outside mediator, the Board will assist them by providing a list from its panel of qualified individuals.

(2) Fees. There will be no cost for a Board staff mediator. The cost of an outside mediator, however, will be equally divided between the parties, unless they agree otherwise.

3.05: Mediator's Function

The function of the mediator is to assist the parties in reaching a voluntary settlement of the dispute prior to grievance arbitration. A mediator may hold separate or joint conferences for this purpose. An agreement to mediate, however, will in no way alter a scheduled arbitration date unless both parties agree to postpone the arbitration. At no time shall a grievance mediator act as arbitrator of any case he or she has mediated, nor shall a grievance mediator discuss any aspect of the grievance mediation process with the appointed arbitrator.

3.06: Admissibility of Grievance Mediation in Arbitration

No discussions, offers of compromise, or proposed settlements generated during grievance mediation shall be admissible as evidence in an arbitration proceeding.

3.07: Initiation of Grievance Arbitration

(1) Petition for Arbitration. An employer or an employee organization, or both, may petition the Board to initiate grievance arbitration (MBCA Form F-2A) as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 457 CMR 3.03 through 3.06, at any time prior to the arbitration hearing, the parties may also jointly request the Board to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served by first-class mail, postage prepaid, on the principal representative of the other party in accordance with the provisions of this subparagraph. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these rules. Failure to so state shall

suspend the processing of the petition. The party or parties requesting grievance arbitration shall mail the original petition, signed and dated by the petitioning party(ies) and a copy of the pertinent collective bargaining agreement to:

Board of Conciliation and Arbitration
[399 Washington Street, 5th Floor
Boston, MA 02108]
FAX # (617) 727-4961

Upon receipt, the Board will stamp the petition with the date of receipt. If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition, and a copy of the pertinent collective bargaining agreement, to the Board in the manner set forth above.

(2) Fee for Grievance Arbitration. The fee for arbitration before the Board shall be $100.00, of which $50.00 shall be paid by the employee organization and $50.00 shall be paid by the employer.

3.08: Appointment and Qualifications of the Arbitrator

(1) Appointment of a Single Neutral Arbitrator. The Chairman of the Board may appoint a single neutral arbitrator, who will hear and determine the case promptly.

(2) Appointment of a Tripartite Board. The Chairman of the Board may appoint a tripartite board to hear and determine grievance arbitration cases on a case-by-case basis. The Chairman shall be the neutral member of this board. One of the other members shall be a representative of labor and one a representative of employers of labor. Prior to appointing these representatives, the Chairman will consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, what representative they recommend.

(3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify him or her as an impartial arbitrator. If the arbitrator is disqualified or withdraws, the Board will appoint another arbitrator in accordance with the provisions of 457 CMR 3.08(1) and (2).

3.09: Scheduling of Hearing by the Board

(1) Scheduling. Upon receipt of the petition, the Board will serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Board in either Boston or Springfield. The notice will be given reasonably in advance of the hearing. The Board will make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board will generally accept such requests. If one party requests a continuance of the hearing, the Board may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at

the discretion of the Chairman. Notice of a new hearing date and time will be given in accordance with the provisions of 457 CMR 3.09(1).

3.10: Issuance of Subpoenas

Any party may request the Board to issue a subpoena to compel the attendance of witnesses or the production of documents. (MBCA Form CA5) A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective. The party requesting the subpoena shall be responsible for service of the subpoena.

3.11: Hearing Before the Arbitrator

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.09, fails to appear or to obtain a continuance. The Board shall investigate the circumstances surrounding a party's failure to be present, and, under extraordinary circumstances, may reopen the record, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 457 CMR 3.03 through 3.06.

(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and will have sole discretion in deciding any issues of procedure. The arbitrator will:

(a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute;

(b) Determine the order of presentation;

(c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;

(d) Administer oaths or affirmations;

(e) Afford each party a full and fair opportunity to present relevant evidence and argument;

(f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute; and,

(g) Rule on the admissibility of evidence.

(5) Transcript or Recording of Proceedings. A party wishing a stenographic record of the proceedings shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. The other party may purchase a copy from the

stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript will be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for his or her own use.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the arbitrator, to an infraction of these rules will be deemed to have waived that objection.

(7) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, he or she shall declare the hearing closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral arguments or to submit written briefs. The time limits on submission of briefs will be established by the arbitrator after consultation with the parties. Should the parties wish to make oral argument, the arbitrator will determine the order of proceeding.

(8) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Board should be submitted to the Board in duplicate, together with a pre-addressed and postage paid envelope addressed to the representative or counsel of the opposing party. The Board will convey all briefs.

3.12: Arbitration Awards

The arbitrator shall issue an award within a reasonable period of time after the hearing has been closed and any briefs have been filed. The Board will simultaneously send by first class mail, postage prepaid, a copy of the award and any accompanying opinion to the counsel or representative of each party.

3.13: Clarification, Modification, or Correction of the Award

(1) Standards.

(a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.

(b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) Procedure.

(a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting parties have received the award. The Board will promptly determine whether to grant the request. The Board may call a conference with the parties to consider the request. The Board will then promptly notify the parties in writing of the disposition of the request.

(b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting party has received the award. Such a request must be served forthwith upon the opposing party's counsel or representative. The Board will give the opposing party an opportunity to respond or raise objections to the request. Any such response or objection must be received by the Board within a reasonable time after the opposing party has received a copy of the request. The Board shall then determine whether to proceed as set forth in 457 CMR 3.13(1).

3.14: Publication of Award and Opinion

The award and opinion of the arbitrator will be treated as a public record and after issuance will be open to public inspection. The Board may have its awards and opinions published unless either party to the proceeding gives written notice to the Board within 30 days of the award that it does not wish to have such award and opinion published.

3.15: Request for Arbitration Before an Ad Hoc Arbitrator

The Board will designate an outside arbitrator if so specified in the collective bargaining agreement. If no procedure is specified, the Board will appoint an arbitrator from its list of qualified individuals. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with these rules. The compensation of an outside arbitrator will be in accordance with the requirements of 457 CMR 2.17.

3.16: Severability

If any of 457 CMR 3.00 should be declared invalid by any final order or decree of a court with proper jurisdiction, such invalid provision or rule will be severed.

REGULATORY AUTHORITY: M.G.L. c. 150, s. 2.

457 CMR 4.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

4.01: Scope of Rules and Effective Date

457 CMR 4.00 shall govern the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Board of Conciliation and Arbitration (hereinafter the Board) as the arbitration tribunal. This chapter shall apply to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E s. 8. 457 CMR 4.00 shall become effective as of June 26, 1978 and shall revoke as of said date all grievance arbitration rules previously adopted by this Board.

4.02: Petition to Initiate Grievance Arbitration Before the Board

(1) Who May File; When to File; Form; Where to File and Number of Copies; Service on Other Party.

(a) Who. A petition to initiate grievance arbitration may be filed by an employer or by a labor organization or by both as the collective bargaining agreement or other agreement between the parties shall provide. In the absence of a controlling provision in the collective bargaining agreement, either party may bring such a petition.

(b) When. Such a petition shall be filed in accordance with the time requirements of the collective bargaining agreement between the parties. In the absence of such provision in a collective bargaining agreement, such petition shall be filed within a reasonable period of time.

(c) Form. The petition shall be prepared on a form furnished by the Board which appears as 457 CMR 4.90 Appendix.

(d) Where; Copies. The original, signed by the petitioner(s) and one copy of said petition, shall be filed with the Board at its offices [at 399 Washington Street, 5th Floor, Boston, MA 02108.]

(e) Service. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of said petition to be served on the principal representative of the other party

by registered or certified mail. The petitioning party, if proceeding unilaterally, shall state in the appropriate place on the petition that it caused a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of 457 CMR 4.02(1)(e). Failure to so state shall suspend the processing of the petition. Upon receipt, the Board shall stamp the petition with the appropriate date.

(2) Contents. The petition shall include the following:

(a)The name, address and affiliation of the labor organization involved and the name, address, and telephone number of its principal representative.

(b) The name and address of the employer involved and the name, address and telephone number of its principal representative.

(c) The nature of the employer's business.

(d) If the petition is being brought jointly and if the parties have agreed upon the issue(s), there shall be a brief statement as to the nature of the dispute and a statement as to the issues(s) jointly submitted; otherwise, the moving party shall give a brief statement as to the nature of the dispute and the remedy sought.

(e) If the petition is being brought unilaterally, a statement that a copy of the petition is being served in accordance with the procedures contained in 457 CMR 4.02(1)(e).

(f) The party(ies) bringing such petition shall sign and date such petition and shall file with the petition a copy of the pertinent collective bargaining agreement.

4.03: Scheduling of Hearing by the Board; Continuances

(1) Scheduling. Upon receipt of the petition, the Board shall serve upon each of the parties a written notice of hearing to be held at the offices of the Board at a time and date fixed therein. Such notice shall be given reasonably in advance of such hearing. In cases where the petition has been brought unilaterally, the Board may give notice of hearing by certified mail, return receipt requested.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board shall continue the hearing to such time and date. If one party requests a continuance of the hearing, the Board may for good cause shown and after consultation with the other party, where possible, continue the hearing to another time and date. Notice of a new hearing date and time shall be given in accordance with the provisions of 457 CMR 4.03(1). Every effort shall be made by the Board to hold such hearing seasonably after receipt of the petition.

4.04: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

4.05: Hearing Before the Board

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of any party who, after notice given in accordance with 457 CMR 4.03, fails to be present or fails to obtain an adjournment. The Board may choose not to base its award solely upon the presentation of one party; rather, it may afford the defaulting party 14 days from the date of the hearing to submit evidence and argument in writing to the Board with a copy to the other party. If the defaulting party makes no such offer of proof within the time aforesaid, the Board shall decide the case on the evidence and argument before it. If the defaulting party chooses to make such offer of proof, the Board shall afford the other party an appropriate opportunity to make a seasonable response.

(2) Counsel or Representative of the Parties. At or before the first hearing conducted by the Board, each party to the dispute shall furnish the Board with a written appearance identifying that party's counsel or representative. Such person or his designee shall have the exclusive authority to present that party's case to the Board, and the Board shall deal with such person as the exclusive spokesman and representative for that party throughout the arbitration proceeding or until it receives notice that some other person shall serve as counsel or representative for a party.

(3) Order of Proceedings. The Board shall open the hearing with a reading of the pertinent portions of the petition to initiate grievance arbitration. The petitioning party will ordinarily present its case first, but the Board may vary this procedure. In the case of a petition brought jointly, the Board shall determine the order of proceeding.

(4) Record of Proceedings. If one or both parties desirethat a stenographic record of the proceedings be made, that party or both parties, as the case may be, shall contact the Board seven days in advance of the hearing to ask that the Board provide such a service. If the Board provides such a service, transcripts will be provided upon request at an appropriate cost to the requesting party(ies). The Board may on its own motion make a stenographic record of the proceedings.

(5) Evidence. Each party shall be afforded full and equal opportunity for the presentation of relevant proofs. The parties may offer such evidence as they desire and shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute. The Board shall rule on the admissibility of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the counsel or representative of both parties except where one of the parties is in default or has waived its right to be present.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the Board, to infraction of these rules shall be deemed to have waived such objection.

(7) Closing of Hearings. The Board shall inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, it shall declare the hearings closed, and it shall record the date and time thereof. Upon the close of the hearings each party shall have the right to make an oral argument and/or file a brief

with the Board. The time limits on submission of briefs shall be established by the Board after consultation with the parties. Should the parties wish to make oral argument, the Board shall determine the order of proceeding.

4.06: Arbitration Awards by the Board

(1) Arbitration Award. After the close of the hearing and the submission of briefs, if any, the Board shall render an award on a form prepared by it. The award shall be decided by majority vote of the Board members; any dissent shall be noted on the award.

(2) Time of Award. The Board shall make every effort to render the award within 30 days of the close of the hearings.

(3) Opinion. The Board shall make every effort to render an opinion to accompany the award. The opinion shall provide a statement of the rationale by which the result was reached. Dissenting opinions may also be given.

(4) Service of Award. The Board shall simultaneously send by mail a copy of its award and accompanying opinion to the principal representative of each party as such name appears on the petition to initiate grievance arbitration or on the appearance form at the time of hearing.

(5) Clarification of Award.

(a) Request for Clarification. Each party or both parties may request the Board to clarify any aspect of its award provided such request is made within a reasonable time of the date of the Board's award.

(b) Procedure in Cases of Joint Request. In cases where the Board receives a joint request from the parties to clarify its award, it shall promptly determine whether any clarification is warranted and shall determine the nature of the clarification, if any, and shall notify the parties in writing of the disposition of the request for clarification. If the circumstances so warrant, the Board may call a conference with the parties to consider the matter of clarification.

(c) Procedure in Cases of Unilateral Request. In cases where the Board receives a unilateral request from a party to clarify its award, it shall have the discretion to decide whether to proceed with such request. If it decides to proceed, it shall promptly determine whether the other party has any objection to the request, and if the circumstances so warrant, it may call a conference with the parties to consider the matter of objections and clarification thereafter, the Board shall decide upon the question of clarification and shall promptly notify the parties in writing of the disposition of these issues.

(6) Publication of Award and Opinion. The awards and opinions of the Board shall be treated as public records and after issuance shall be open to public inspection by any person. The Board may have its awards and opinions published by any of the publishing services unless either party to the proceeding gives written notice to the Board within 10 days from the date of the award that it does not wish to have such award and opinion published.

4.07: Request for Arbitration Before Ad Hoc Arbitrator

In the case of those collective bargaining agreements where the Board is named as the tribunal administering grievance arbitration before ad hoc arbitrators, the Board shall follow the procedure specified in the collective bargaining agreement in the designation of an outside arbitrator. If no procedure is specified in such agreement, the Board shall appoint an arbitrator from the list of qualified persons that it maintains. The arbitrator so designated shall observe in the conduct of the arbitration proceedings and in the rendering of his award the procedures applicable to the Board's handling of such matters as previously spelled out in these rules. The compensation of an outside arbitrator shall be in accordance with the requirements set forth in 457 CMR 2.15 of the Board's Fact Finding Rules.

4.08: Gender; Days

(1) Gender. The masculine gender shall be deemed to denote the feminine or neutral gender, the singular to denote the plural and vice-versa where the context so permits.

(2) Days. References to days shall mean calendar days, and time calculations shall commence with the day following notice.

4.09: Severability

The provisions of these rules are severable, and if any of the rules contained herein should be declared invalid by an order or decree of a court with proper jurisdiction and if said order or decree has become final, such invalid provision or rule shall be severed herefrom.

(4.10 through 4.89: Reserved)

4.90: Appendix

SEE TEXT

REGULATORY AUTHORITY: M. G. L. c. 150E, s. 8

C. JOINT LABOR-MANAGEMENT COMMITTEE

JOINT LABOR-MANAGEMENT COMMITTEE
FOR MUNICIPAL POLICE AND FIRE
Adopted August 24, 2000[2]

The purpose of the Joint Labor-Management Committee is to encourage the parties to collective disputes involving municipal police officers and fire fighters to agree on the terms of collective bargaining agreements or the procedures to resolve particular disputes. The Committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement and a constructive long-term relationship.

I. The Operations of the Committee

1. Each part of the Committee, professional police officers, professional fire fighters and representatives of the cities and towns shall designate a chairman of its group within the Committee to facilitate consultation and communications. Each part of the Committee shall establish procedures by which it shall designate a chairman and the term of office.

2. In matters exclusively pertaining to municipal fire fighters, committee members nominated for appointments by professional police officer organizations shall not vote, and in matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional fire fighter organizations shall not vote.

3. All Committee members shall be eligible to vote on matters of common and general interest.

4. The number of votes of Committee members representing the local government advisory committee and the number of votes of Committee members representing the professional fire fighter or police organizations entitled to vote on any matter coming before the Committee shall be equal.

5. The Chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to exercise jurisdiction over a dispute. The Chairman shall be the chief administrative officer of the Committee. The Vice Chairman shall assist the Chairman and may be authorized by the Chairman to act for him in his absence and shall have the full powers of the Chairman when so authorized and he shall vote only in the absence of the Chairman.

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[2] The Rules of the Joint Labor-Management Committee are not contained in the Code of Massachusetts Regulations. Rather, the Committee promulgates its rules pursuant Chapter 1078 of the Acts of 1973, §4A(4), as most recently amended by Chapter 589 of the Acts of 1987, §1. The Joint labor-Management Committee adopted its Rules on July 2, 1979 and adopted amended Rules on May 6, 1988, January 6, 1994, and August 24, 2000.

6. The Committee shall comply with the Open Meeting Law of the Commonwealth as amended. That statute, Chapter 30, Section 11A ½ (3), provides that executive sessions may be held "to discuss strategy with respect to collective bargaining and to conduct collective bargaining sessions," including related mediation and such sessions may be closed by the Committee.

7. A quorum shall consist of one member of the Committee representing the local government advisory committee and one member of the Committee representing the professional fire fighter organizations and one member of the Committee representing the professional police officers organizations and the Chairman or Vice Chairman.

8. The Committee expects that its members shall regularly attend meetings of the Committee. However, professional police organizations, professional fire organizations and the local government advisory committee shall specify alternate members to represent their respective members, subject to the approval of the full Committee, for a term of one year (subject to re-appointment) to assure that the work of the Committee may go forward. Alternate members are expected regularly to attend meetings of the Committee.

9. The Committee shall appoint one full-time senior staff person nominated by the members of the Committee representing the local government advisory committee and one full-time senior staff person nominated by the members of the Committee representing the professional police officer and professional 'fire fighter organizations. The two senior staff persons work together to further the purposes of the Committee. They may be assigned by the Committee through the Chairman to gather facts, to facilitate negotiations, to mediate, and otherwise to encourage agreement between parties.

10. The Committee may specify other staff positions in accordance with law and within the budget. The Chairman shall supervise such staff. The Committee may also appoint special mediators, fact finders and neutrals to facilitate the resolution of particular cases.

II. The Involvement of the Committee in Disputes

1. The Committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and fire fighters.

2. The Committee shall request the Executive Office of Labor, the Board of Conciliation and Arbitration and the Labor Relations Commission each to designate a person with whom the Committee shall maintain a flow of information and through whom the Committee shall consult these Agencies on particular cases to assure co-operative relations and consistent activities in the interest of improved collective bargaining and dispute resolution.

3. Should either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe a dispute is unresolved and warrants mediation, the party or both parties shall petition the Committee for the exercise of jurisdiction. Such petition shall identify the issues in dispute, the parties and the efforts of the parties to resolve the dispute.

(a) The Committee shall forthwith review the petition and shall make a determination within thirty (30) days of the receipt of the petition whether to exercise jurisdiction over the

dispute. If the Committee declines to exercise jurisdiction over the dispute or fails to act within thirty (30) days of receipt of the petition of jurisdiction, the petition shall automatically be referred to the Board of Conciliation and Arbitration for disposition in accordance with its procedures.

(b) The Committee may subsequently at any stage after consultation with the Board of Conciliation and Arbitration remove the dispute from the jurisdiction of the Board and handle the case as if it had retained jurisdiction at the outset. The Committee may, at any time, remand to the Board any dispute in which the Committee has exercised jurisdiction. The Committee's decisions on jurisdiction are to be formally communicated to the Board of Conciliation and Arbitration and to the parties.

4. After a petition has been filed with the Committee, the parties to any municipal police and fire fighter negotiations shall furnish the assigned field investigator the following information:

(a) Copies of requests to bargain and proposals of each side.

(b) Notification of all pending unfair labor practice proceedings between the parties.

(c) Collective bargaining agreements and relevant personnel ordinances, bylaws, and rules and regulations including wage and salary and benefit schedules.

(d) Such other information as the field investigator may reasonably require for the Committee.

5. The Committee may, at its discretion, and on its own initiative exercise jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal fire fighters or police officers. The Committee may also exercise jurisdiction in any dispute concerning job titles over which the parties have negotiated or in any dispute over proposals to remove specific job titles from collective bargaining for individuals and performing certain specified management duties.

6. The Committee or its representatives, field investigators or staff mediators are authorized to meet with the parties to a dispute, conduct formal or informal conferences, to set dates for such meetings, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the disputes. The Committee shall make every effort to encourage the parties to engage in good faith bargaining to reach settlement through negotiations or mediation.

7. In certain disputes that persist, the Committee may order fact-finding and appoint a fact-finder outside the Committee to report the facts, mediate the dispute and make recommendations for resolution of the disputed issues. The Committee may on occasion designate its members, including the Chairman or Vice Chairman, to perform such functions. The Committee shall determine the procedures for the distribution and any release of the report.

8. In dispute resolution conducted by other than the Committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution, provided, however, that pursuant to a vote of the Committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the Committee.

9. The Committee shall have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues in the dispute.

10. In any dispute before the Committee in which it concludes that a study of the financial ability of the municipality to meet costs may facilitate the resolution of the dispute, it may request the Commissioner of Revenue to make a study specifying various factors to be taken into consideration.

11. When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the Committee of jurisdiction by presenting a written agreement of their procedures to the Committee; provided, however, that the Committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further, that if the Committee subsequently finds that either of the parties fails to abide by said procedures, the Committee shall assume jurisdiction of the dispute.

III. Procedures in Disputes that have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. (Section 3 (a) of Chapter 589 of the Acts of 1987)

1. In a dispute, over which the Committee has taken jurisdiction, and which the Committee determines issues in dispute have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining, the Committee may direct an investigation hearing to be held by a tripartite panel of the Committee, or by the Chairman or Vice Chairman of the Committee, or by the senior staff for labor and the senior staff for management together (who may also substitute for a labor or management member of a tripartite panel) to identify:

a) the issues remaining in dispute;

b) the current position of the parties;

c) the views of the parties as to how the continuing dispute should be resolved;

d) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties;

e) other relevant questions

Such hearing officers shall report to the Committee the information gathered at the hearing.

2. If the Committee thereafter finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings. Within ten (10) days of such notification, the Committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate, and it has been authorized by legislation to use, for the resolution of the collective bargaining negotiations.

3. In any dispute involving the financial ability of the municipality to meet costs, the assistance of a report of the Commissioner of Revenue is to be requested, if a current

report had not been secured earlier in dispute resolution efforts of the Committee. (See II-I0 above.)

4. Any decision or determination resulting from the above procedures determined by the Committee, if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body or a funding request as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the Committee in superior court in equity.

5. The statute requires that the municipal employer "shall submit to the appropriate legislative body within thirty days after the date on which the [arbitration] decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of such request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting."

In the event that the municipal legislative body votes not to approve the request for appropriation, the Committee retains full jurisdiction of the dispute. The Committee may take such further action as it deems appropriate to resolve the dispute including further mediation, fact-finding or dispute resolution procedures.

6. In the event a JLMC panel at a 3(a) hearing considers that the number of issues reported as open are too numerous for an effective dispute resolution or arbitration proceeding, and it has been unable to secure a voluntary agreement to limit the number or scope of issues, it may recommend to the full Committee the issues each party may present in the arbitration or other dispute resolution proceeding. In such case the Committee may limit and specify the issues for arbitration or may limit by specifying to each party the number and scope of issues to be presented to arbitration, defining issues narrowly and precisely.

The parties shall be informed that all other outstanding issues are deferred and shall not be a part of the agreement in dispute. The appointed or selected arbitrator or arbitration panel shall issue an award on the limited number of issues, and the award shall determine the changes to be incorporated in the collective bargaining agreement of the full term under negotiations. Nothing in this parapraph is intended to preclude the parties from incorporating in a collective bargaining agreement mutually agreed upon provisions.

7. A JLMC panel at a 3(a) hearing is further authorized to recommend to the Committee procedures to expedite the arbitration or fact-finding process by specifying or not pre-hearing briefs and the date and the number of days of hearing. The question of post-hearing briefs is ordinarily to be left to the discretion of the arbitrator or arbitration panel. The arbitration award or fact-finding report is due in the JLMC office thirty days from the conclusion of the hearing or due date of post-hearing briefs. The JLMC may specify these elements of the arbitration or fact-finding process in its order to the parties.

8. In view of the structure and composition of the JLMC established by legislation (Chapter 589 of the Acts of 1987), in any continuing proceeding of the Committee such as a sub0committee, a Section 3(a) hearing, an authorized tripartite fact-finding or tripartite arbitration panel to resolve a particular dispute, each of the constituent parts of the Committee—professional fire fighters, police or municipal management—shall be free to substitute one member or alternate in the course of the proceeding with the expressed approval of the chairman of that group. In the event of an emergency involving the attendance of a labor or management member of such committee or panel, the senior staff for labor or management may serve at the designation of the chairman of the group. This freedom of substitution to accommodate work schedules shall not apply to neutral chairpersons of such panels.

PART IV: SUMMARY OF DECISIONS

A. JURISDICTION

(1) Federal Preemption

Under the doctrine of federal preemption, where there is a grant of power to the federal government in a field that requires a uniform system of regulation and the federal government has exercised that power, the states are barred from entering or regulating the field. *Foley, Hoag & Elliot*, 2 MLC 1302 (1976). In the field of labor relations, the National Labor Relations Act, 29 U.S.C. §151, *et seq*. (NLRA), covers employers engaged in interstate commerce and, therefore, generally preempts any state labor relations law.

Section 2(2) of the NLRA, excludes, *inter alia*, states and other "political subdivisions" from coverage. Further, whether an entity is a “political subdivision” depends on federal, not state law. *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600, 77 LRRM 2348 (1971).

Section 14(c)(1) of the NLRA also permits the NLRB to decline to assert jurisdiction over any class or category of employers "where, in the opinion of the [NLRB], the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction." Pursuant to Section 14(c)(2) of the NLRA, where the NLRB has declined to assert jurisdiction pursuant to Section 14(c)(1), the Commission may assert jurisdiction under M.G.L. c.150A. *See*, M.G.L. c.150A, §10(b); *Operations and Maintenance Service Westover Jobs Corps. Center/G.E. v. Labor Relations Commission*, 405 Mass. 214 (1989). For example, the NLRB has declined to exercise jurisdiction pursuant to Section 14(c)(1) over the horseracing and dog racing industries. *See*, *NLRB Rules and Regulations*, Part 103.3. The NLRB has also declined jurisdiction over day care centers with less than $250,000 in gross annual revenues. *See, e.g.*, *Salt & Pepper Nursery School & Kindergarten No. 2*, 222 NLRB 1295, 91 LRRM 1338 (1976). Accordingly, the Commission has jurisdiction over employers in those industries. *See*, *Greater New Bedford Infant Toddler Center*, 12 MLC 1131 (H.O. 1985), *aff’d*, 13 MLC 1620 (1987). However, the Commission will normally refrain from acting in any matter that is arguably within the jurisdiction of the NLRB until the NLRB has specifically declined to assert jurisdiction.

Prior to 1995, the NLRB considered whether an employer lacked the ultimate authority to determine primary terms and conditions of employment when deciding whether to decline jurisdiction pursuant to Section 14(c). *See*, *Res-Care, Inc*., 280 NLRB 67, 122 LRRM 1265 (1986). However, in *Management Training Corporation*, 317 NLRB 1355, 149 LRRM 1313 (1995) *reconsideration denied*, 320 NLRB 131, 151 LRRM 1226 (1995), the NLRB determined that the employer control test used in *Res-Care* was “unworkable and unrealistic.” Instead, the NLRB determined that “whether there are sufficient employment matters over which unions and employers can bargain is a question better left to the parties at the bargaining table and, ultimately, to the employee voters in each case.” 317 NLRB at 1355.

Whether the NLRB declines jurisdiction on the ground that the employer is a "political subdivision" or declines jurisdiction pursuant to Section 14(c)(1) of the NLRA, the Commission will make its own determination about whether an entity is a "public employer" within the meaning of M.G.L. c.150E, §1. *See*, *Franklin Institute of Boston*, 12 MLC 1063 (1985)(NLRB's determination that entity was a "political subdivision" within the meaning of the NLRA not dispositive of Commission's consideration whether entity is a "public employer" within the meaning of M.G.L. c.150E, §1*)*. For more information concerning whether a particular entity is a public or private employer, *see* paragraph B(1), below.

(2) Parallel Jurisdiction

The Commission and the Civil Service Commission have parallel jurisdiction in certain limited areas. The Civil Service Commission cannot act as a substitute for the Commission in cases where civil service employees allege a violation of M.G.L. c.150E. The Supreme Judicial Court has held that the Civil Service Commission vindicates a private right of a complaining employee. On the other hand, the Commission, although it does not initiate the action, acts as a public prosecutor to test a public right*. Town of Dedham v. Labor Relations Commission*, 365 Mass. 392 (1974). Therefore, even if the Civil Service Commission had previously found that a public employer had just cause for disciplining an employee, the Commission may examine the facts to determine whether the discipline was imposed in retaliation for the employee's participation in activities protected by M.G.L. c.150E*. Board of Selectmen v. Labor Relations Commission*, 16 Mass. App. Ct. 972 (1983); *See also*, *Town of Dedham*, 21 MLC 1015 (1994)(consent order entered into by employer and Massachusetts Commission Against Discrimination (MCAD) changing employee's seniority date does not deprive Labor Relations Commission of jurisdiction over claim by union that employer failed to bargain in good faith in violation of M.G.L. c.150E over impacts of consent order on members of bargaining unit); *Newton School Committee*, 8 MLC 1538 (1981)(Commission considers determination by Department of Employment and Training that laid off employees were entitled to receive unemployment compensation, but such evidence does not establish *prima facie* evidence that employees had mitigated their damages as required by M.G.L. c.150E). For a discussion of the effect that an arbitration proceeding or award may have on a Commission proceeding, *see* paragraph K(2), below.

(3) Primary Jurisdiction

The doctrine of primary jurisdiction dictates that a court should normally defer action on a case when the subject matter of the case is within the jurisdiction and expertise of an administrative agency in order to permit the agency to first decide the case. In *Leahy v. Local 1526, American Federation of State, County, and Municipal Employees*, 399 Mass. 341 (1987), the Supreme Judicial Court held that breach of the duty of fair representation was a prohibited practice and that, consequently, cases raising the duty of fair representation should normally be decided by the Commission in the first instance. *See also*, *Johnston v. School Committee of Watertown*, 404 Mass. 23 (1989)(where there are genuine issues of material fact requiring the Commission's expertise, Commission has

primary jurisdiction over labor dispute involving union's duty of fair representation); *Ash v. Police Commissioner of Boston*, 11 Mass. App. Ct. 650 (1981)(plaintiff's action alleging anti-union discrimination dismissed because claim was within the Commission's prohibited practice jurisdiction and plaintiff had not pursued claim before the Commission). The Court has also held that, because a union's assessment of an agency service fee in excess of the amount legally permitted by M.G.L. c.150E, §12 is a prohibited practice, those claims are within the Commission's primary jurisdiction. *School Committee of Greenfield v. Greenfield Education Association*, 385 Mass. 70 (1982).

B. DEFINITIONS

(1) “Employer”

M.G.L. c.150E, §1 defines the term "employer" or "public employer" as the Commonwealth, acting through the commissioner of administration, or any county, city, town, district, or other political subdivision acting through its chief executive officer. M.G.L. c.150E, §1 excludes authorities created pursuant to M.G.L. c.161A, establishing the Massachusetts Bay Transportation Authority (MBTA), and those authorities included under the provisions of Chapter 760 of the Acts of 1962 (Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority). For a further discussion about authorities, *see* paragraph B(1)(c), below.

(a) State Employees

Subject to certain statutory exceptions, the Commonwealth, acting through the commissioner of administration, is the "employer" of all state employees. *Massachusetts Probation Ass'n v. Commissioner of Administration*, 370 Mass. 651 (1976); *See also*, *Commonwealth of Massachusetts*, 23 MLC 117 (1996). Those exceptions are:

- the Board of Higher Education, which is the employer for all employees of the system of public institutions of higher education, except that the Board of Trustees of the University of Massachusetts is the employer for employees of the University of Massachusetts;

- the Chief Administrative Justice of the Trial Court, which is the employer for all judicial employees;

- the State Lottery Commission, which is the employer for State Lottery Commission employees;

- the Massachusetts Water Resources Authority, which is the employer for Massachusetts Water Resources Authority employees

(b) County Employees

With certain exceptions (see below), the *county* is the employer for all county employees. Further, where two independently elected county officials (or boards) exercise control over the terms and conditions of employment, those officials (or boards) are "joint chief executive officers." *Essex County*, 22 MLC 1556(1996)(county commissioners and county sheriffs are joint chief executive officers); *Essex Agricultural and Technical Institute*, 4 MLC 1755 (1978)(county commissioners and trustees of county agricultural and technical school are joint chief executive officers).

Prior to 1992, the Suffolk County House of Correction employees were employees of the City of Boston. *See*, *City of Boston/Deer Island House of Correction*, 19 MLC 1613, 1614, n.2 (1992). In 1992, those employees were transferred to the Suffolk County Sheriff's Department, and in 1995, the legislature amended M.G.L. c.150E, §1 to define the Suffolk County Sheriff as the employer of employees of the Suffolk County Sheriff's Department. *See*, Chapter 39, Section 10 of the Acts of 1995.

In 1997 and 1998, the legislature abolished the counties of Middlesex, Hampden, Worcester, Hampshire, Essex, and Berkshire. *See*, Chapter 48 of the Acts of 1997, as amended by Chapter 300, of the Acts of 1998. In the case of former registry of deeds employees in the abolished counties and former registry of deeds employees of the Suffolk County Registry of Deeds, the employer is the Secretary of the Commonwealth. *See*, Chapter 48, Sections 11-12 of the Acts of 1997, as amended by Chapter 300, Sections 25-28 of the Acts of 1998. However, although county correctional officers in the abolished counties were similarly transferred to the Commonwealth, the employer of those correctional officers is the county sheriff. *See*, Chapter 49, Section 14 of the Acts of 1997; *Worcester County Sheriff's Department*, 28 MLC 1 (2001).

(c) Authorities

Although employees of certain public authorities are *public* employees, many are covered by M.G.L. c.150A, which primarily covers private sector employees. M.G.L. c.161A, §19A provides that M.G.L. c.150A, §5 applies to the MBTA and its employees.[1] Similarly, Chapter 760 of the Acts of 1962 provides that M.G.L. c.150A applies to the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority.[2] *See also*, Chapter 775 of the Acts of 1975 (Massachusetts Municipal Wholesale Electric Company covered by M.G.L c.150A).

Prior to 1981, the definition of "employer" or "public employer" did not include "other political subdivision[s]" and did not contain exclusions for the MBTA and those authorities listed in Chapter 760 of the Acts of 1962. Even without the specific exclusions, however, the Commission historically applied the applicable provisions of M.G.L. c.150A to the MBTA

[1] Because M.G.L. c.150A, §5 refers only to the selection of an exclusive representative, the Commission has determined that it lacks jurisdiction over alleged unfair labor practices in violation of M.G.L. c.150A in matters involving the MBTA and its employees. *See*, *Frederick D. Cooney*, No. UPL-81, UP-2322 (July 9, 1976).

[2] Although the underlying policies in both M.G.L. c.150A and M.G.L. c.150E are identical, there are differences in the application of the two laws. *See*, *e.g*. paragraph E(3)(2), below (period during which a representation petition may be filed different); paragraph B(4), below (certain professional employees excluded from definition of employee in M.G.L. c.150A, §2).

and those authorities listed in Chapter 760 of the Acts of 1962. *See e.g*., *Massachusetts Port Authority*, 5 MLC 1844 (1979). The Commission has also determined that, because M.G.L. c.121B, §29 grants bargaining rights to housing authority employees pursuant to M.G.L. c.150E, by implication, housing authorities are public employers within the meaning of M.G.L. c.150E, §1. *Fall River Housing Authority*, 8 MLC 2038 (1982); *See also*; *Springfield Housing Authority v. Labor Relations Commission*, 16 Mass. App. Ct. 653 (1983). However, other authorities were historically excluded. In *Fall River Redevelopment Authority*, 4 MLC 1690 (1978), the Commission refused to exercise jurisdiction over a redevelopment authority on the ground that the employer was not within the definition of "public employer," and the Commission lacked any other statutory basis for exercising jurisdiction.

Chapter 484 of the Acts of 1981 amended M.G.L. c.150E, §1 to include "other political subdivision[s]" and to specifically exclude authorities created pursuant to M.G.L. c.161A (MBTA) and those authorities included under the provisions of Chapter 760 of the Acts of 1962. Thereafter, in *Geriatric Authority of Holyoke*, 12 MLC 1571 (1986), the Commission determined that, because the particular entity was created by the legislature as a "public body corporate and politic," and was a political subdivision, the entity was a public employer within the meaning of M.G.L.c.150E, §1. In making that determination, the Commission found that the 1981 amendment "was intended to include authorities" within the definition of "employer" or "public employer." 12 MLC at 1576.

(d) School Departments

In the case of school employees, the municipal employer is represented by the school committee or its designated representative.[3] A municipal school committee is not a separate legal entity, but rather is the agent of the municipality for the purpose of dealing with school employees. *City of Malden*, 23 MLC 181 (1997). Therefore, a municipality and a school committee are a single entity and share responsibility for making and fulfilling contractual commitments. *Id*.

A regional school committee is the public employer of employees of the regional school district. In school districts composed of more than one school committee, the district may function as a "single" employer for the purposes of collective bargaining. *Nauset Regional School District*, 5 MLC 1453 (1978); *Freetown-Lakeville School Committee*, 11 MLC 1508 (1985). In *Shore Collaborative*, 7 MLC 1351 (1980), and *South Shore Educational Collaborative*, 7 MLC 1356 (1980), the Commission concluded that

[3] Section 62 of the Education Reform Act of 1993, Chapter 71 of the Acts of 1993, amended the definition of "employer" or "public employer" in M.G.L. c.150E, §1 to require the chief executive officer of a city or town or his/her designee to participate and vote as a member of the city or town school committee; provided, however, that if there is no town manager or town administrator in a town, the chairman of the board of selectmen or his/her designee shall so participate and vote.

communities that are members of a collaborative, through their respective school committees, have a single-employer relationship with employees of the collaborative.

(e) Other Employers; Control Test

As stated in paragraph A(1), above, the preemptive nature of the NLRA requires the Commission to defer action until the NLRB specifically declines jurisdiction. However, if the NLRB declines jurisdiction, the Commission will determine whether to apply M.G.L. c.150A or M.G.L. c.150E by determining whether the employer is a public or private empoyer. To determine whether an enterprise is a "public employer" within the meaning of M.G.L. c.150E, §1, the Commission considers factors like the identity and control of the enterprise's board of managers, the nature of the employer's corporate structure, and the identity of the titleholder to the enterprise's real property. *Franklin Institute of Boston*, 12 MLC 1063 (1985); *Bourne Recreation Authority*, 28 MLC 98 (2001).

Whether a particular entity is the "employer" of the employees involved depends on whether the entity is controlled by the public employer to such a substantial degree that employees of the entity can be considered to be employees of the public employer. In *Worcester School Committee*, 13 MLC 1471 (1987), the Commission considered the following factors in determining that the Worcester School Committee was the employer of certain employees in the Worcester Head Start Program: 1) whether the entity hired employees; 2) whether the entity had authority to unilaterally discipline, transfer and/or discharge employees; 3) whether the entity set the wage rates; 4) whether the entity determined job assignments; 5) whether the entity paid the employees; and 6) whether the entity was liable for reporting and remitting deductions for social security, unemployment taxes, federal and state taxes. 13 MLC at 1482. *Cf*. *Hudson Bus Lines*, 4 MLC 1630 (1977)(private bus company, not school committee was "employer" of bus drivers who transport school children). *See also*, *Higher Education Coordinating Council*, 23 MLC 194 (1997)(Higher Education Coordinating Council (now Board of Higher Education) exercises sufficient control over certain individuals to establish that it, not a "Leadership Committee" comprised of members appointed by the Department of Education, is employer); *Commonwealth of Massachusetts*, 23 MLC 117 (1996)(the Commonwealth is not the "employer" of security and law enforcement personnel assigned to certain military installations jointly operated by the United States Government and the Commonwealth, through its adjutant general, because the commissioner of administration and finance does not exercise sufficient control over terms and conditions of employment).

Using a similar analysis, the Commission has concluded that certain retirement boards that operate with complete fiscal and administrative autonomy from the city in which they are located are separate "employers" of their own employees. *City of Brockton*, 19 MLC 1139 (1992).

(2) "Employee"

M.G.L. c.150E, §1 defines the term "employee" or "public employee" as "any person in the executive or judicial branch of a government unit employed by a public employer," with certain specified exceptions. Those exceptions are:

- elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees;

- members of the militia or national guard[4];

- employees of the Labor Relations Commission; and officers and employees within the departments of the State Secretary,[5] State Treasurer,[6] State Auditor and Attorney General.[7]

See also, paragraph B(1)(b), above, for a discussion about certain excluded authorities.

The Commission has broadly interpreted the terms "employee" or "public employee" to encompass all individuals employed by a public employer, except those specifically excluded. *City of Fitchburg*, 2 MLC 1123 (1975); *City of Gloucester*, 26 MLC 128 (2000). The Commission has defined "employee" to include: regularly employed part-time employees, *Board of Regents*, 14 MLC 1589 (1988), part-time reserve police officers, *Town of Newbury*, 14 MLC 1660 (1988), per diem substitute teachers, *Boston School Committee*,

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[4] *But see*, *Commonwealth of Massachusetts*, 6 MLC 1976 (H.O. 1980), *aff'd*, 7 MLC 1740 (1981)(Commission considers M.G.L. c.33, §4, which defines "militia" as enlisted personnel, and concludes that "armorers," which are "[f]or all intents and purposes" civilian janitors and custodians, are employees within the meaning of M.G.L. c.150E, §1).

[5] Although M.G.L. c.150E, §1 excludes employees of the Department of the State Secretary from the definition of employee, Chapter 48 of the Acts of 1997, as amended by Chapter 300 of the Acts of 1998, transferred certain former county registry of deeds employees to the Secretary of the Commonwealth and provided that those transferred employees retained their bargaining rights under M.G.L. c.150E. *See*, Chapter 48, Section 11(b) of the Acts of 1997; paragraph B(1)(a), above.

[6] Except for employees of the State Lottery Commission.

[7] Pursuant to Chapter 110, Section 269(b) of the Acts of 1993, certain employees transferred from the Department of Labor and Industries to the Office of the Attorney General are considered public employees within the meaning of M.G.L. c.150E, §1.

7 MLC 1947 (1981), call fire fighters, *Town of Leicester*, 9 MLC 1014 (1981); *Town of Wenham*, 23 MLC 82 (1996), *aff'd sub nom*., *Town of Wenham v. Labor Relations Commission*, 44 Mass. App. Ct. 195 (1998), visiting lecturers, *Board of Regents*, 11 MLC 1486 (1985), full-time students, *Quincy Library Department*, 3 MLC 1517 (1977), graduate teaching and research assistants, *Board of Trustees, University of Massachusetts*, 20 MLC 1453 (1994), and undergraduate resident assistants and community development assistants, *Board of Trustees of the University of Massachusetts*, 28 MLC 225 (2002).

Probationary employees, *City of Fitchburg*, 2 MLC 1123 (1975), employees classified as temporary or provisional employees under Civil Service law, M.G.L. c.31, *Boston School Committee*, No. MUP-9067 (March 2, 1994), *aff'd sub nom*., *School Committee of Boston v. Labor Relations Commission*, 40 Mass. App. Ct. 327 (1996), *further app. rev. denied*, 422 Mass. 1111 (1996), and seasonal employees,[8] *Town of Wellfleet*, 11 MLC 1238 (1984), are employees within the meaning of M.G.L. c.150E, §1.

Unlike the National Labor Relations Act (NLRA), neither M.G.L. c.150E, §1 nor M.G.L. c.150A, §2 exclude supervisory employees from the respective definitions of employee. For a discussion about the differences between *supervisory* and *managerial* employees, *see* paragraphs B(2)(b) and D(3), below. For a discussion about the appropriateness of placing supervisors in bargaining units with employees whom they supervise, *see* paragraph D(3), below.

(a) Independent Contractors

Independent contractors are not employees under either M.G.L. c.150E or M.G.L. c.150A. However, where individuals perform a service for a public employer for compensation and with supervision, the Commission will recognize, as a rebuttable presumption, that an employment relationship exists. *Board of Regents*, 11 MLC 1486 (1985). That presumption can be rebutted by evidence demonstrating that the employer does not retain "control" over the worker. When considering whether the employer retains sufficient control over the worker, the Commission examines the duties of the workers, the type of supervision they receive, the method in which they are paid, and the manner in which they are treated by the employer. *Id*.; *See also*, *Massachusetts Interscholastic Athletic Association*, 16 MLC 1706 (H.O. 1990), *aff'd* 17 MLC 1388 (1991); *City of Boston*, 24 MLC 73 (1998). Rather than categorically exclude all persons compensated from the state budgetary "03" (contracted employees subsidiaries) account, the Commission has concluded that it is more appropriate to apply the well-settled legal standards which differentiate employees from independent contractors on a case-by-case basis. *Board of Regents*, 13 MLC 1347 (1986).

[8] For a discussion about the appropriateness of placing seasonal employees in a bargaining unit with regular employees, *see*, paragraph, D(1)(b), below.

(b) Managerial Employees

M.G.L. c.150E, §1 excludes *managerial employees* from the definition of "employee." However, the Commission has consistently interpreted the titles listed in M.G.L. c.150E, § 1 as examples of managerial classifications, rather than as positions to be excluded without regard to the exercise of managerial authority. *See, City of Chicopee*, 19 MLC 1765 (1993), *aff'd sub nom. City of Chicopee v. Labor Relations Commission*, 38 Mass. App. Ct. 1106 (1995).

M.G.L. c.150E, §1 defines a managerial employee as only one who:

- participates to a substantial degree in formulating or determining policy; or
- assists to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer; or
- has a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

To be excluded as managerial, an employee must satisfy to a substantial degree any of the three statutory criteria. *Lee School Committee*, 3 MLC 1496 (1977); *Taunton School Committee*, 1 MLC 1480 (1975).

To satisfy the first criterion, an employee must participate with regularity in the process that results in a decision to put a policy into effect. *Town of Agawam*, 13 MLC 1364 (1986). Unlike supervisory personnel who "transmit policy directives to lower level staff and, within certain areas of discretion, implement the policies," managerial employees "make the [policy] decisions and determine the objectives." *Wellesley School Committee*, 1 MLC 1299 (1975), *aff'd sub nom.*, *School Committee of Wellesley v. Labor Relations Commission,* 376 Mass. 112 (1978). Neither limited participation in the decision-making process, nor attending and participating in policy-making discussions is sufficient to consider an employee managerial, if the input is merely informational or advisory in nature. *Barnstable County*, 26 MLC 183 (2000); *Town of Medway*, 22 MLC 1261 (1995); *Town of Wellfleet*, 11 MLC 1238 (1984); *Wellesley School Committee*, 1 MLC 1299 (1975), *aff'd sub nom.*, *School Committee of Wellesley v. Labor Relations Commission,* 376 Mass. 112 (1978). A managerial employee's authority "includes not only the authority to select and implement a policy alternative, but also regular participation in the policy decision-making process." *Town of Plainville*, 18 MLC 1001 (1991), *citing Town of Agawam*, 13 MLC 1364 (1986). Finally, the policy decision must be of major importance to the mission and objectives of the public employer. *Id*.

To satisfy the second criterion, the employee must have a voice in determining bargaining strategy or the conditions for settlement. *City of Quincy*, 13 MLC 1436 (1987); *Wellesley School Committee*, 1 MLC 1389 (1975), *aff'd sub nom. School Committee of*

Wellesley v. Labor Relations Commission, 376 Mass. 112 (1978). The employee must be directly involved in preparing and formulating the employer's proposals or positions in collective bargaining. *Town of Agawam*, 13 MLC 1364 (1986). Mere consultation concerning the implications or feasibility of proposals is not sufficient. *Id*. Administrators who review contract proposals concerning the teachers' bargaining unit in order to prevent a possible adverse impact on their own employment do not substantially participate in collective bargaining. *Town of Holbrook*, 1 MLC 1468 (1975).

The third statutory criterion concerns the exercise of independent judgment of an appellate responsibility. Judgment is independent when it lies within the employee's sole discretion, without the need to consult with a higher authority. *Town of Agawam*, 13 MLC 1364 (1986). Further, the judgment exercised must be significant. *Id*. Mere participation in the adjustment of grievances, without appellate responsibility over such grievances, does not meet the standard for managerial status. *City of Quincy*, 13 MLC 1436 (1987). Similarly, authority to select among applicants to fill a vacancy does not make an employee managerial when the authority to determine whether or not to fill the vacancy resides in a higher authority. *Id*.

Unlike M.G.L. c.150E, M.G.L. c.150A neither defines nor excludes managerial employees from coverage. *Massachusetts Bay Transportation Authority*, 22 MLC 1111 (1995). However, the Commission has historically excluded managerial employees from coverage under M.G.L. c. 150A. *See*, *Id.* In *Brookline Hospital,* CR-3402 (January 28, 1974) the Commission applied a standard similar to the standard contained in M.G.L. c.150E, §1 to determine whether certain employees were managerial employees and, therefore, excluded from coverage under M.G.L. c.150A.

To determine whether an employee falls within the managerial exclusion, the Commission scrutinizes the employee's actual duties and responsibilities rather than job descriptions or duties that may be performed in the future. *Town of Bridgewater*, 15 MLC 1001 (1988). Job titles, or the inclusion of an employee on a particular pay scale, are not determinative. *See*, *Massachusetts Bay Transportation Authority v. Labor Relations Commission*, 425 Mass. 253 (1997); *Commonwealth of Massachusetts*, 25 MLC 121 (1999); *Masconomet Regional School District*, 3 MLC 1034, 1040 (1976). Finally, a managerial employee's discretionary delegation of managerial tasks to an immediate subordinate does not confer managerial status on the subordinate where the latter's participation is at the sufferance of the managerial employee rather than as an exercise of actual authority within the organizational hierarchy. *Town of Bridgewater*, 15 MLC 1001 (1988).

(c) Confidential Employees

M.G.L. c.150E, §1 excludes *confidential employees* from the definition of "employee." A confidential employee is defined as an employee who directly assists and acts in a confidential capacity to a person or persons otherwise excluded from coverage.

The Commission applies the confidential exclusion narrowly and balances the broad extension of collective bargaining rights against the potential danger of disrupting the employer's operations. *Silver Lake Regional School Committee*, 1 MLC 1240 (1975). An employee must have a continuing and substantial relationship with a managerial employee of such a nature that there is a legitimate expectation of confidentiality in their routine and recurring dealings. *Town of Agawam*, 13 MLC 1364 (1987); *Littleton School Committee*, 4 MLC 1405 (1977). However, employees may directly assist excluded employees without assisting them in a confidential capacity. *University of Massachusetts*, 3 MLC 1179 (1976). Thus, a managerial employee's reliance upon another employee as a conduit for policy advice and personnel recommendations does not, standing alone, render the latter a confidential employee. *Id*. Similarly, access to sensitive material, like financial data, personnel records, or medical records and audits, without more, does not necessarily make an employee confidential. *Town of Milton*, 8 MLC 1234 (1981); *Wellesley School Committee*, 1 MLC 1389 (1975), *aff'd sub nom*. *Town of Wellesley v. Labor Relations Commission*, 376 Mass. 112 (1978). Occasionally substituting for an absent employee and performing confidential functions does not make the substituting employee confidential. *Town of Wellfleet*, 11 MLC 1238 (1984). By contrast, employees who as a matter of course have access to all or substantially all of the collective bargaining proposals prior to their submission to the employees' bargaining agent have been excluded as confidential. *City of Quincy*, 13 MLC 1436 (1987). Similarly, employees who regularly type contract proposals for use by the employer in collective bargaining negotiations have been excluded as "confidential." *Silver Lake Regional School Committee*. 1 MLC 1240 (1975). Secretaries to school superintendents and school committees have generally been excluded. *Belchertown School Committee*, 1 MLC 1304 (1975); *Framingham Public Schools*, 17 MLC 1233 (1990). The wife of a police chief was excluded from a bargaining unit that worked under the direction of her husband. *Town of Plympton*, 5 MLC 1410 (1978).

Unlike M.G.L. c.150E, M.G.L. c.150A neither defines nor excludes confidential employees. However, the Commission has excluded confidential employees under M.G.L. c.150A. *See*, *e.g*. *Old Colony Elderly Services, Inc*., 6 MLC 1893 (1980).[9]

(d) Other Excluded Employees

The Commission has determined that legislative employees, *City of Lawrence*, 13 MLC 1632 (1987); *City of Somerville*, 23 MLC 256 (1997), employees of the Massachusetts Defenders Committee (now, Office of Public Counsel), *Commonwealth of Massachusetts, Chief Administrative Justice,* 5 MLC 1699 (1979), the non-legal staff of the Committee for Public Counsel Services, *Committee for Public Counsel Services*, 20 MLC 1201 (1993), mediators of the Board of Conciliation and Arbitration, *Commonwealth of Massachusetts*, 6

[9] Although in *Old Colony Elderly Services, Inc* the Commission described the appropriate unit as: "[a]ll case managers, excluding the executive director, supervisors of case managers, managerial and *confidential employees*, and all other employees," whether there were or were not confidential employees in the bargaining unit was not an issue before the Commission.

MLC 1918 (1980), and prisoners, *Commonwealth of Massachusetts*, SCRX-2 (September 24, 1973), are not employees within the meaning of M.G.L. c.150E, §1.

(3) Professional Employees

M.G.L. c.150E, §1 defines a professional employee as an employee engaged in work:

- predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work,
- involving the consistent exercise of discretion and judgment in its performance,
- of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and
- requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

For an employee to be considered a professional employee within the meaning of M.G.L. c.150E, §1, all four criteria must be met. *Commonwealth of Massachusetts*, 10 MLC 1162 (1983). The mere performance of intellectual and varied work, even if it cannot be standardized by time, will not alone qualify an employee as professional. *City of New Bedford*, 3 MLC 1159 (1976).

Like the analysis to determine whether an employee is a managerial employee, see, paragraph B(2)(b), above, the Commission analyzes the employees' actual job duties to determine whether an employee is a professional employee. However, by way of example, the Commission has determined that the following employees are professional employees: accountants, *City of Springfield,* 5 MLC 1170 (1978); librarians, *Town of Braintree,* 5 MLC 1133 (1978); *Town of Rockland,* 15 MLC 1325 (1989); physical therapists, *City of Worcester,* 6 MLC 1104 (1979); and the social workers, nurses and certain teachers, coordinators, supervisors, and therapists in a Head Start school program, *Worcester School Committee,* 13 MLC 1471 (1987).

The Commission has determined that the following are not professional employees: licensed practical nurses, *Plymouth County Hospital,* 1 MLC 1255 (1975); teachers at a child care center, *Wesley Child Care Center,* 1 MLC 1098 (1974); home care case managers, *Old Colony Elderly Services,* 6 MLC 1893 (1980); and court reporters, *Commonwealth of Massachusetts,* 10 MLC 1162 (1983). Although exhibiting some of *the* qualifications of professional employees, technical employees have been classified as non-

professional. *See*, *City of Worcester,* 6 MLC 1104 (1979) (respiratory therapists and physical therapy assistants).

M.G.L. c.150E, §1 also defines professional employee to include a detective, member of a detective bureau or police officer who is primarily engaged in investigative work in any city or town police department that employs more than four hundred (400) people.

M.G.L. c.150A does not contain a definition of professional employee. However, the Commission has used the definition contained in M.G.L. c.150E to determine whether certain employees were professional employees within the meaning of M.G.L. c.150A. *See*, *Old Colony Elderly Services,* 6 MLC 1893 (1980).

Unless otherwise excluded (*e.g*. as a managerial or confidential employee), professional employees are included in the definition of employee in M.G.L c.150E. However, for purposes of unit placement, they are handled differently. For a discussion about the Commission's statutory obligations when placing professional employees in bargaining units with non-professional employees, *see* paragraph D(4), below. Finally M.G.L. c.150A, §2 defines employee to include any nurse or nonprofessional employee of a health care facility or of any nonprofit institution. Therefore, certain professional employees of health care facilities or nonprofit institutions are excluded from the definition of employee and are excluded from coverage under M.G.L. c.150A. *Id*.

(4) Employee Organization

M.G.L. c.150E, §1 defines an employee organization as "any lawful association, organization, federation, council or labor union, the membership of which includes public employees and assists its members to improve their wages, hours, and conditions of employment." The definition is purposely broad and does not require any specific kind of organizational structure. *Commonwealth of Massachusetts (Unit 6)*, 10 MLC 1557 (1984); *City of Lawrence*, 4 MLC 1851 (1978). The Commission's focus is whether the purpose of employee organization is to represent employees for the purpose of collective bargaining. *Boston Water and Sewer Commission*, 7 MLC 1439 (1980). *See*, *also*, *Blue Hills Regional Technical School District*, 9 MLC 1271 (1982). Organizations that petition the Commission for a representation election have been found to meet the statutory definition although they have had no by-laws, constitution, officers, dues, or any prior history of bargaining. *Town of Haverhill/Hale Hospital*, 15 MLC 1334, 1336 (1989); *Commonwealth of Massachusetts (Unit 6)*, 10 MLC 1557 (1984). *Cf*., *Massachusetts Bay Transportation Authority*, 6 MLC 2086 (1980). Whether an organization has met reporting or filing requirements that may exist outside M.G.L. c.150E is not relevant to the question of its status as an employee organization under Section 1 of the Law. *Commonwealth of Massachusetts (Unit 4)*, 15 MLC 1380, 1383 (1989); *IBPO*, 1 MLC 1225 (1974).